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THE CASE OF MIROSLAV MEDVID

ORIGINAL

HEARING AND MARKUP

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS

AND ITS

SUBCOMMITTEE ON EUROPE AND THE MIDDLE EAST

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

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NOVEMBER 7, 1985

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THE CASE OF MIROSLAV MEDVID

THURSDAY, NOVEMBER 7, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON EUROPE AND THE MIDDLE EAST,
Washington, DC.

The subcommittee met, at 9:30 a.m., in room 2172, Rayburn House Office Building, Hon. Tom Lantos presiding.

Mr. LANTOS. The hearing of the Subcommittee on Europe and the Middle East on the case of the Soviet sailor, Miroslav Medvid, is now in session.

This hearing deals with an issue of enormous importance. It is of enormous importance not only for the individual sailor involved, for whom it might be a question of life or death, it is also an issue that deals with criminal violations of procedures involving Soviet defectors. It deals with disciplinary actions relating to individuals. It deals with the relationship of this event and the upcoming summit between President Reagan and Mr. Gorbachev. And it is taking place on the 100th anniversary of the creation of the Statue of Liberty.

Contrary to public statements by some public officials, the case is not closed. It is wide open. All options are still available to us.

We have a very tight schedule and a number of witnesses who need to leave shortly. I will give an opportunity to my colleagues to make a 1 minute opening statement if they so choose.

Congressman Feighan.

Mr. FEIGHAN. Thank you very much, Mr. Chairman. Let me commend you for your initiative in holding today's hearing on this extremely important matter. I have a particular interest in this issue in that two of my constituents believe that they are actually close relatives to Mr. Miroslav Medvid and have been for the past several days, since Sunday of last week, in New Orleans, attempting to deliver a personal message to the ship captain, seeking an opportunity to meet with Mr. Medvid to determine with certainty that he is their relative and to have the opportunity to make a judgment as to whether or not his interest in defecting to the United States is real and if that would be affected by his knowledge of having relatives in this country.

Mr. Chairman, I think you are absolutely right when you underscore the timeliness of this hearing today by stating that this case is not closed. This is an individual who is still within the territorial limits of the United States and there is still ample opportunity for us to intercede on his behalf. I would hope that as we hear testimony today, the witnesses will react to the general question as to

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whether or not we have adequate procedures to ensure that similar incidents are dealt with in the future in a much more acceptable fashion.

I would suggest that those procedures are not sufficient, that they have to be revised, they have to be re-evaluated and we have to put in place a system, a process where all U.S. Government officials will ensure that due process is available to those individuals who are seeking political asylum in this country, particularly those coming from Soviet bloc nations.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much.

Congressman Smith, of New Jersey.

Mr. SMITH of New Jersey. Thank you, Mr. Chairman.

I thank you for convening this hearing this morning. It seems clear to me that Miroslav Medvid should at least be questioned further to ascertain whether or not he seeks asylum in the United States. I believe, judging by his earlier actions and representations that sufficient doubt has been raised concerning Mr. Medvid's intentions.

I am concerned that Mr. Medvid may be under considerable pressure and duress and I don't think we can rule out the possibility that threats have been made against Mr. Medvid and his family to encourage him to forego defecting. I think as Mr. Feighan pointed out, we need to review our procedures to ensure that they are adequate and to ensure that something like this does not occur again in the future. A set criteria should be established as to how we should proceed to ensure that future Medvids can be avoided.

Mr. LANTOS. Thank you very much.

Congressman Ackerman.

Mr. ACKERMAN. No opening statement.

Mr. LANTOS. Congressman Mazzoli.

Mr. MAZZOLI. I thank you.

I have no opening statement.

Mr. LANTOS. Congressman Ritter.

Mr. RITTER. Thank you, Mr. Chairman.

I also commend you for holding these important hearings and I would like to just add on to what Mr. Feighan said. He mentioned that some people in his district may be related to Miroslav Medvid. I propose that anybody who believes in human rights is a brother or a sister of Miroslav Medvid.

Those of us who have been with this activity from the beginning, I think feel a very special kinship. Mr. Chairman, I have introduced a resolution. Many of the members of this subcommittee and one of our distinguished witnesses is a cosponsor. It expresses the sense of Congress that this situation was indeed flubbed and seeks to redress the situation by giving Miroslav Medvid another chance.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much.

As is our custom, we begin with our own colleagues. I am pleased to welcome my friend and colleague, Congressman Bonior.

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STATEMENT OF HON. DAVID E. BONIOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. BONIOR. Thank you, Mr. Chairman. I would like to commend you and the subcommittee for holding these hearings and especially for holding them in such a very timely fashion. Three different incidents in the past 2 weeks have raised very strong questions about the way the United States is handling the cases of Soviet defectors.

Mr. Chairman, I would like to address one of those incidents, the case of the Ukrainian seaman, Miroslav Medvid. The American people have questions about what the Soviets have done to this young man to, quote, unquote, persuade him to return. Why would a man who twice jumped ship, who swam the very dark and difficult waters of the Mississippi to reach freedom, sign away that freedom just 4 days later? The American people do not believe this case is closed and I am pleased to hear from the comments of the members of this subcommittee that you don't believe that it is closed either.

They have taken the spirit of this Ukrainian seaman to their hearts. To relinquish this young man, to deny all that he represents, is a concession, I believe, that the American people are unwilling to make. It is a concession that I believe is not necessary. The Soviet ship must not be allowed to leave our waters until Miroslav Medvid has had a chance to choose freedom once and for all.

The case of Miroslav Medvid is not an isolated one and he must not be forsaken now when I regret to say it appears that our own Government is so absorbed in the dance of summitry at Geneva that it will dismiss the cry for liberty when it reaches our own shores.

Mr. Chairman, I know you have a full list of witnesses who want to testify this morning and I will not consume any more of the subcommittee's time. I am grateful for this opportunity to testify and to express my deep concern over this incident. I do have additional comments I wish to submit for the record and I thank you generously for the time you have given me this morning.

[Mr. Bonior's prepared statement follows:]

PREPARED STATEMENT OF HON. DAVID E. BONIOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I would like to commend Chairman Hamilton and the subcommittee for holding these hearings, and especially for holding them in such a timely fashion.

Three different incidents in the past two weeks have raised serious questions about the way the United States is handling the cases of Soviet defectors. Mr. Chairman, I would like to address one of those incidents, the case of the Ukrainian seaman, Miroslav Medvid.

The American people have questions about what the Soviets have done to this young man to "persuade" him to return. Why would a man who twice jumped ship, who swam the dark and difficult waters of the Mississippi to reach freedom, sign away that freedom just four days later?

The American people do not believe this case is closed. They have taken the spirit of this Ukrainian seaman to their hearts. To relinquish this young man, to deny all he represents, is a concession the American people are not prepared to make.

It is a concession that is not necessary. The Soviet ship must not be allowed to leave our waters until Miroslav Medvid has had a chance to choose freedom once and for all.

The case of Miroslav Medvid is not an isolated one, and it must not be forsaken now, when -- I regret to say -- it appears that our own government is so absorbed in the dance of summitry in Geneva, that it will dismiss the cry for liberty when it reaches our own shores.

I know the committee will deal in detail today with the

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impact of such incidents on U.S. - Soviet relations. And I hope you will carefully review the policies we have in place for dealing with cases like this. We must be up front about the mistakes that were made, and make a systematic effort to see that such mistakes are not repeated in the future.

But even as we are compelled to examine the implications of this case for the broad scope of U. S. - Soviet relations, and for our future policy, we must not turn our back on the Ukrainian seaman, Miroslav Medvid. We must have some answers to the questions that remain about his treatment.

Why was he returned to the Soviet ship after less than twenty-four hours?

Why was he returned simply on the basis of a late night phone interview with a translator over a thousand miles away in New York?

Why were no U. S. officials present when he was returned, officials who might have sensed his genuine reluctance to return, a feeling so strong that he once again jumped into the Mississippi to avoid being put back on the Soviet ship?

Why was he returned before the State Department had been apprised of the incident?

There can be no doubt that fateful mistakes were made in the first few hours, when Medvid was unable to communicate his desires, and when U. S. officials made inadequate attempts to learn his intentions.

Once he had been returned to the Soviet ship, having been tainted as a potential defector, the possibilities of establishing his true desires, in an unthreatening environment, may have forever

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vanished.

It was several days before U. S. officials were able to speak with him at length again, and then always under the watchful eye of Soviet officials. How can our government argue that a statement signed under these conditions represents his true desire to return to the Soviet Union!

What will be his future now? The future of his family? Will they join the long list of Soviet political prisoners?

Why has the Administration rushed to declare this case closed? Is it a desire to calm relations between the super-powers before the summit? If that is the reason, then I believe that even before the President sits down with Mr. Gorbachev, he has given away too much.

This will be a persistent problem. As long as the United States holds to its values, as long as the Soviet Union continues to denigrate those same values, people will dream and be drawn to this country.

If we concede the case of Miroslav Medvid today, it will haunt us in the future.

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Mr. LANTOS. We want to thank you for you eloquent statement. You are most welcome to stay or join us up on the panel.

Mr. BONIOR. I have other meetings but I will hopefully return a little later this morning to listen.

Thank you.

Mr. LANTOS. We will be glad to have you.

Our second witness is Ambassador Arkady N. Shevchenko. Ambassador Shevchenko is a former high-ranking Soviet foreign ministry official, former Under Secretary General of the United Nations for Political and Security Counsel Affairs and formerly the highest ranking Soviet individual serving within the United Nations body. He defected to the United States in 1978. He is the author of the widely praised "Breaking with Moscow," a memoir of his own life. We are delighted to have you, Ambassador Shevchenko. Please proceed in your own words to tell us what you believe happened, why it happened and what we should do about it.

STATEMENT OF ARKADY N. SHEVCHENKO, FORMER UNDER SECRETARY GENERAL OF THE UNITED NATIONS FOR POLITICAL AND SECURITY COUNCIL AFFAIRS AND AUTHOR OF "BREAKING WITH MOSCOW"

Mr. SHEVCHENKO. Thank you, Mr. Chairman.

Mr. LANTOS. Would you mind pulling the mike very close to you?

Mr. SHEVCHENKO. Thank you very much, Mr. Chairman.

I also join those who express their deep concern about this case and I think it is also very timely to have these hearings. When I read this story about Miroslav Medvid in the American press, I didn't believe my eyes. I just couldn't comprehend how any American, not only the Immigration Authority, but anyone could act in such a way toward someone who is absolutely acting in a way which is evident to absolutely any person in his right mind that he wanted to escape. He jumped from the Soviet ship and even someone who does not understand the Ukrainian or Russian language, or any language, can see that this man would like to flee. They don't like to stay anymore with the Soviets. He was handcuffed, brought back and tried again.

He has been fighting again those people who tried to bring him back. This is incredible, unbelievable. I wonder whether there are even regulations which are clear enough for the people to handle this situation.

So it is one thing, which is very important in these hearings, to look again at the regulations which exist and to request the Government and Immigration Authority, everyone in the United States to strictly observe that and not to permit such a thing to happen.

Second, I think that definitely Miroslav Medvid has to be given another chance and it is not too late yet to do so. What the Soviets have done and how they convinced him to say that he would like to come back to the Soviet Union; I can figure out more or less what happened.

They told to him that, look, you see what the Americans have done? You see this barbaric imperialist, we taught you all your life

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in the Soviet Union how Americans are and they would ask you a few questions.

After, they will lose interest in you, they will again return you to us. But before it is too late, you better decide and stay with us because later it would be worse for you if they will return you.

This is, you know, this is most convincing reason for this person of what might happen and of what he can expect in the United States. Of course, I don't like to rule out many other things which they could do, such as threats against his family and even using some physical coercion against him.

All this might be the case. But this incident manifestly lost Medvid's confidence and trust in the Americans, in those who were handling his case. We have here also Mr. Kudirka who experienced himself similar things.

I could imagine how one would feel and how I would feel in this situation. I don't know now whether he really can trust again or, you know, even if he will be given another chance. But I again repeat that this chance should be given to him and I hope that these hearings and discussions in the Congress will result in a much better understanding by everybody in the United States, particularly by the Government and Immigration Authority, Of what they have to do in such a case.

Thank you very much.

Mr. LANTOS. Thank you very much, Mr. Shevchenko. We will have a number of questions for you, but I would first like to welcome to the committee Mr. Simas Kudirka. As all of us know, Mr. Kudirka was a Lithuanian seaman who jumped from his Soviet fishing vessel and made his way to a U.S. Coast Guard ship off Martha's Vineyard in 1970. He was beaten, forcibly dragged back to his Soviet ship by Soviet sailors. This happened at that time with the permission of the Captain of the Coast Guard vessel. After he was taken back to the Soviet Union, he spent nearly 4 years in Soviet prison.

Because of his family ties, Mr. Kudirka subsequently immigrated to the United States, and now lives here with his family. Welcome to you, Mr. Kudirka. You are perhaps the only person that has experience almost identical to—or at least parallel to the experience of Mr. Medvid.

We are anxious to have you tell us what you think happened and what you believe we should do about it.

Please proceed with your statement.

STATEMENT OF SIMAS KUDIRKA, SOVIET DEFECTOR

Mr. KUDIRKA. Honorable Chairman, and members of the committee, my name is Simas Kudirka, an American citizen by my mother's birth, who spent more than half of his life in Soviet Russia and occupied Lithuania. It is almost 11 years of the date since my arrival in the United States of America.

I served 3 years and 9 months of a 10 year sentence in the hell of the Soviet Gulag for having attempted to defect to the United States off the coast of Martha's Vineyard on November 23, 1970. Thanks to the grace of God and the ceaseless efforts of men and women such as yourselves, I did not die in the Gulag and appear before

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you today to plead with you to give Miroslav Medvid a second chance.

From my own experience, I shall assure you of the unbearable psychological trauma that Miroslav Medvid must now be experiencing. Those of us living in repressive systems such as Soviet Union place such tremendous faith in America as the beacon of freedom and justice. Americans themselves have lost sight of this vision but for us who make that leap of faith to America's arms, it is a vision we implicitly trust.

Members of the committee, do not allow your sense of compassion to make the wrong decision for Medvid. Medvid's decision on Tuesday, October 29, was a decision of a man whose soul is already lost, a man who we know now attempted suicide rather than return to the Soviet Union.

I, too, contemplated suicide and begged the United Coast Guard cutter officer for a knife. For my knowledge as a Soviet seaman, I can testify to the fact that there are established procedures for dealing with attempted defectors.

Each ship carries a manual with specific instructions outlining interrogation and intimidation procedures to be carried out by a KGB officer onboard.

Among these are instructions on inflicting bodily harm on the defector which cannot be visually detected. In these instances, the medical staff of the ship works exclusively under the directions of the KGB officer. Whatever threats or promises were made to Medvid by Soviet officials do not reflect the reality which awaits him. From the experience I shared with my fellow prisoners in the Gulag, I can testify to the following:

Victor Shchibalkin defected in Spain in the late sixties. Political asylum was granted by the Spanish Government. The Soviet embassy tracked Shchibalkin down at his residence and showed him letters from his mother imploring him to return home. They even paid for phone calls to his mother.

The Soviets granted him freedom from any persecution if only he returned home. Upon return, he was met at the airport by the KGB, arrested, put on trial and sentenced to 10 years in the strict regime concentration camp. He never saw his mother. Shchibalkin told this to me in the summer of 1971 in the concentration prison camp No. 3 located near the village of Barashevo, Mordavia, U.S.S.R.

Victor Zaitsev, attached to the fishing fleet, who in the late sixties attempted to defect to the United States off the coast of Alaska, was caught lowering a lifeboat, arrested and transported back to the Soviet Union in handcuffs. There he was secretly tried for treason and sentenced to 10 years in a strict regime concentration camp.

I met him also in Mordavia in the summer of 1971.

Peshchany, a Ukrainian Soviet fighter pilot, betrayed by a fellow pilot as he prepared to fly his plane to freedom, he was tried for treason and sentenced to 10 years in a strict regime labor camp. Then I met him at the camp No. 3 in Mordavia in 1971 he had already contracted tuberculosis following 8 months of intensive interrogation and torture by the KGB.

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These are just a few of the men whose faith reflect the broken promises of the KGB. I have every reason to believe that the same faith awaits Medvid, a long path to a slow death.

If you are willing to give this young Ukrainian that second chance but are torn by thoughts that you might be separating him from his loved ones, remember Shchibalkin, Zaitsev, and Peshchany. Be assured he has already been severed from his family.

If his family is to be punished for his defection, he won't be able to help from the Gulag. If he is allowed to stay here in the West, he may one day have the opportunity to help them.

On the basis of what happened to me and what is happening to Medvid now, I ask this question: Is there a secret agreement between the United States and the U.S.S.R. that guarantees a forcible return of defectors? If there is such an agreement and America is no longer haven for political refugees from the Soviet Russia empire, then the United States Government should announce it loud and clear so that the common man in the U.S.S.R. is fully aware that there is no reason to risk his life on American shores because he is already betrayed.

There is more honor in refusal than betrayal.

Thank you all for giving me the opportunity 11 years ago to come to this free land. Today I testify before you and ask that same chance be given to this 20-year-old man from Ukraine. Ask yourselves what chance would you give your own son, what chance you give Miroslav Medvid, to stay here and be free or to go back to nameless, numbered graves.

Gentlemen, here is a place—numerous places in Russian empire, arrested millions of political prisoners, Lithuanians, Estonians, Latvians, Ukrainians, Jewish Byelo Russians, Polish Azerbaydzhans, Russian Armenians, Uzbeks, Tadzhiks, and all nation's representatives who are under Russian control.

Thank you very much.

Mr. LANTOS. Thank you very much, Mr. Kudirka. We will have a number of questions to ask of you.

[Mr. Kudirka's prepared statement follows:]

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Prepared Statement of Simas Kudirka, Soviet Defector

Honorable Chairman and Members of the Committee, my name is Simas Kudirka, an American citizen by my mother's birthright, who spent more than half of his life in Soviet-Russian occupied Lithuania.

It is almost 11 years to the date since my arrival in the United States of America. I served three years and nine months of a ten-year sentence in the hell of the Soviet Gulag for having attempted to defect to the United States off the coast of Martha's Vineyard on November 23, 1970.

Thanks to the grace of God and the ceaseless efforts of men and women such as yourselves, I did not die in the Gulag and appear before you today to plead with you to give Myroslav Medvid a second chance. From my own experience, I can assure you of the unbearable psychological trauma that Myroslav Medvid must now be experiencing.

Those of us living in repressive systems such as the Soviet Union place such tremendous faith in America as the beacon of freedom and justice. Americans themselves have lost sight of this vision, but for us who make that leap of faith to America's arms, it is a vision we implicitly trust.

Members of the Committee, do not allow your sense of compassion to make the wrong decision for Medvid. Medvid's decision last Tuesday was the decision of a man whose soul is already lost -- a man who we now know attempted suicide rather than return to the Soviet Union. I, too, contemplated suicide and begged the U.S. Coast Guard officers for a knife.

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From my knowledge as a Soviet seaman, I can testify to the fact that there are established procedures for dealing with attempted defectors. Each ship carries a manual with specific instructions outlining interrogation and intimidation procedures to be carried out by the KGB officer on board. Among these are instructions on inflicting bodily harm on the defector which cannot be visually detected. In these instances, the medical staff of the ship works exclusively under the direction of the KGB officer.

Whatever threats or promises were made to Medvid by Soviet officials do not reflect the reality which awaits him. From the experiences I shared with my fellow prisoners in the Gulag, I can testify to the following:

Victor Shchibalkin - defected in Spain in the late sixties. Political asylum was granted by the Spanish government. The Soviet Embassy tracked Shchibalkin down at his residence and showed him letters from his mother imploring him to return home. They even paid for phone calls to his mother. The Soviets guaranteed him freedom from any prosecution, if only he would return home. Upon return, he was met at the airport by the KGB, arrested, put on trial, and sentenced to ten years in a strict regime concentration camp. He never saw his mother. Shchibalkin told this to me in the summer of 1971 in concentration camp #3 located near the village of Barashevo, Mordavia, ASSR.

Victor Zaitsev - a Soviet diver attached to the fishing fleet, who in the late sixties attempted to defect to the U.S. off the coast of Alaska, was caught lowering a lifeboat, arrested and transported back to the Soviet Union in handcuffs. There, he was secretly tried for treason and

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sentenced to ten years in a strict regime concentration camp. I met him also in Mordavia in the summer of 1971.

Peshchany - a Ukrainian Soviet fighter pilot betrayed by a fellow pilot as he prepared to fly his plane to freedom. He was tried for treason and sentenced to ten years in a strict regime labor camp. When I met him at camp #3 in Mordavia in 1971, he had already contracted tuberculosis following eight months of intensive interrogation and torture by the KGB.

These are just a few of the men whose fate reflects the broken promises of the KGB. I have every reason to believe that the same fate awaits Medvid -- a long path to a slow death. If you are willing to give this youn Ukrainian that second chance, but are torn by thoughts that you might be separating him from his loved ones, remember Shchabalkin, Zaitsev and Peshchany. Be assured that he has already been severed from his family; if his family is to be punished for his defection, he won't be able to help them from the Gulag. If he is allowed to stay in the West, he may one day have an opportunity to help them.

On the basis of what happened to me and what is happening to Medvid now, I ask this question. Is there a secret agreement between the United States and the USSR that guarantees the forcible return of defectors? If there is such an agreement, and America is no longer a haven for political refugees from the Soviet-Russian Empire, then the United States government should announce it loud and clear so that the common man in the USSR is fully aware that there is no reason to risk his life on American shores because he is already betrayed. There is more honor in refusal than betrayal. Thank you all for giving me the opportunity 11 years ago to come to this free land. Today, I testify before you to plead that the same chance be given to this 23-year old from Ukraine. Ask yourselves what chance would you give your own son? What chance will you give Myroslav Medvid? To stay here and be free, or to go back to a nameless, numbered grave.

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Mr. LANTOS. The next person on the panel is Irene Padoch. Dr. Padoch is a Ukrainian, Russian, and Polish translator for the Immigration and Naturalization Service. She spoke with Miroslav Medvid, the Ukrainian sailor, by telephone after he jumped overboard and was taken to New Orleans.

Your written statement, without objections, will be placed in the record. You realize, Dr. Padoch, that your 40 or 45 minute discussion with Mr. Medvid is perhaps the key episode in this whole drama. It is absolutely essential that we have an opportunity to explore with you whether, in fact, there is any doubt in your mind that your translation or interpretation could have been misinterpreted.

It is critical that we find out from you what your impression was at the time of your telephone conversation with Mr. Medvid as to his intentions, and whether you believe it is conceivable that, except for either physical or psychological torture he could have changed his mind.

We are very pleased to have you. We know you have been on the go practically since this episode occurred and we appreciate your being here.

Dr. Irene Padoch.

STATEMENT OF IRENE PADOCH, INS INTERPRETER

IRENE PADOCH'S INTERVIEW WITH SEAMAN MEDVID

Mrs. PADOCH. Thank you, Mr. Chairman. I have to correct only one thing, I am interpreter for Ukrainian and Polish refugees.

Mr. LANTOS. I apologize. You conducted the interview in Ukrainian?

Mrs. PADOCH. In Ukrainian. I am from western part of Ukraine and I didn't have an opportunity to learn Russian.

Mr. LANTOS. You felt that the conversation you conducted in Ukrainian was fully understood by Mr. Medvid?

Mrs. PADOCH. That is right.

Mr. LANTOS. There is no doubt of that in your mind?

Mrs. PADOCH. Absolutely. He was very happy when he first heard me and he asked me to come there immediately and it was between New York City and New Orleans so it was impossible to go there.

Mr. LANTOS. Just for the record, there is no doubt in your mind that he understood Ukrainian?

Mrs. PADOCH. No. He spoke perfectly and he understood me. After every question I had to translate. I always asked Miroslav if you hear me and understand me good. He told me always, "I understand you very well."

IMPRESSION OF THE INTERVIEW

Mr. LANTOS. Please tell us what your impression was of the interview.

Mrs. PADOCH. My impression was that there was no doubt that Miroslav Medvid wanted to defect and his voice was clear and at the end of the questioning on my answer "do you like to stay here" and "you are asking for political asylum" because it was stated this

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way by the officer of Immigration, he, without any hesitation, answered yes.

Mr. LANTOS. Did you convey that answer to the Immigration people?

Mrs. PADOCH. Yes. I conveyed this to the Immigration officer. He asked me for the second time what was his answer and I told "he answered yes."

CLARITY OF INFORMATION PASSED TO INS

Mr. LANTOS. Is there any doubt in your mind that the Immigration officer understood you?

Mrs. PADOCH. No. I have no doubt, because after this conversation, he asked me if I will be available the next day and when Medvid told me that he was very nervous, what would happen to him, the officer told me that he will stay under arrest until morning. He did probably mention morning.

He asked me if I will be available during the night hours. It was about 1 already at night, but maybe at 3, but better maybe in the morning, or the next day.

And he told me, when I told the officer, "The boy is very nervous and he is very much afraid," the officer asked me to calm him and tell him that he can relax and assure him that nothing will happen to him, and that nobody will beat him.

But the boy opposed—that means, he was a little bit unhappy that he will be arrested. He said he has never been arrested in his whole life and he could not relax. He said he will stay on the chair until the morning hours.

Mr. LANTOS. Stay on the chair, remain there?

Mrs. PADOCH. He will sit on the chair until morning hours.

Mr. LANTOS. Is it conceivable to you, Dr. Padoch, that he changed his mind without either physical or psychological torture or threats against his family?

Mrs. PADOCH. I don't think it would be possible, because he was so positive that he would like to stay, he told me this is an honorable and honest country.

RETURN OF SEAMAN MEDVID TO THE "MARSHAL KONEV"

Mr. LANTOS. Ambassador Shevchenko, there is one statement you made in your opening remarks I would like to return to.

You mentioned treatment by Seaman Medvid by our own authorities shattered his confidence in the United States. He was forcibly taken back the first time. He again jumped into the Mississippi, and swam ashore. He was physically detained.

As a matter of fact, he was subdued, handcuffed and as he lay on boulders along the bank, he started banging his head against the rocks. He had to be moved so he couldn't hurt himself.

Then he was taken back again kicking and screaming. Six Soviet sailors from the ship had to drag him back.

What do you think happened once he arrived aboard ship?

Mr. SHEVCHENKO. I think the first thing the Soviets would say to him, look, again, I will repeat what they did to you, how they treated you. It is obvious, I think, that I have no doubt in my mind it

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was a deep psychological shock for him and one can have a change—I agree with you.

Mr. LANTOS. Could you get the mike closer to you?

Mr. SHEVCHENKO. I entirely agree that certainly a clear-cut idea about a defection, he wanted to defect to the United States and what he said in the telephone conversation about the United States, he believed in that. But if he was treated in that way, how can he be sure that his future—that would be logical and formal for the Soviets to do that, because they are more shrewd and subtle as to use torture and something, which is not to exclude they did both, and threaten his family.

I think it is a very convincing argument which they used in telling him that you cannot have confidence in America. A poor boy who has no experience in life, who cannot be sure about what he can expect in the United States, I can imagine what he thought about all this experience.

Dr. Padoch also just mentioned that he never in his life had been arrested. All of a sudden, he is handcuffed. This is the stereotype cliche which is read in the Soviet press, that has been told that in the United States, if you come to this country, you know how they will treat you, handcuff you and all this kind of thing. This is something which led him to believe what the Soviets wanted to do.

I entirely agree with Mr. Kudirka that they tried to promise him, you know, everything, that everything will be all right in the Soviet Union. They did it in conversation with me also. The same technique was used that they will be forgiven, that everything will be all right, but everybody knows what will happen to him really.

U.S. TREATMENT OF SEAMAN MEDVID

Mr. LANTOS. I just have a quick followup question because this is pivotal to our State Department's position with respect to a subsequent interview they had with him. You are saying, basically, Mr. Shevchenko, that Seaman Medvid, after probably tremendous soul searching, decided to jump and make his break for freedom. His first experience is that our side says he will be arrested. Then we take him back to the ship.

He jumps in the river again and then he is physically detained and is taken back kicking and screaming. His confidence, his faith in the United States, at that point is shattered.

When the State Department interviews him 3 days later, after he has had the treatment on the ship, it is unrealistic to expect that he suddenly starts believing us. It would have taken 2 weeks or 3 weeks in a nonthreatening environment for him to be able to once again make the decision he wanted to make.

Would you agree with that?

Mr. SHEVCHENKO. Mr. Chairman, I entirely agree with you. That is exactly what happened. His confidence was shattered.

When I was in a secure house, my confidence in the United States would be entirely shattered if I had been treated in such a way. If I had been handcuffed, I would have immediately called the Soviet Embassy and requested to go back to the Soviet Union and be punished. That is what would happen to me if I were treated in that way in the United States.

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It really would not happen, because I know much better—I know much better this country than poor, young Medvid, who you know, who had no idea. Now it is only after—we cannot expect him all of a sudden to begin to believe in everything.

It should be a long period of time in which he will see with his own eyes the reality in the United States. Then he perhaps could make a better judgment.

Mr. LANTOS. Thank you very much.

We want to get our executive branch witnesses on as rapidly as we can.

We will recognize members of the committee for one question each.

Congressman Gilman.

IRENE PADOCH'S INTERVIEW WITH SEAMAN MEDVID

Mr. GILMAN. Thank you, Mr. Chairman.

Mrs. Padoch, where were you at the time that you were addressing these questions to the Soviet sailor?

Mrs. PADOCH. I was in my house in New York City.

Mr. GILMAN. Was there an Immigration officer, any person with you?

Mrs. PADOCH. Nobody was with me; no.

Mr. GILMAN. It was all done by phone and you took notes of your conversation?

Mrs. PADOCH. Yes, just small——

Mr. GILMAN. You then made out this affidavit at a later time.[1]

Mrs. PADOCH. Later time, because the next day, I went to—nobody ever called me until Tuesday.

Mr. GILMAN. You went back to Kerhonkson?

Mrs. PADOCH. I went to my house in Catskill Mountains. I did not know anything about this, what happened to the boy, until one special agent from INS came to my house. It was before 6 o'clock in the morning, and we spoke.

He explained to me they did not know what has happened. They came and some other people from some other division of the INS and we spoke. They asked me how it was.

According to my recollection, we were going point by point how it was, what was the question and the answers.

Mr. GILMAN. You had some notes of your questioning?

Mrs. PADOCH. No. I have the statement.

Mr. GILMAN. I said before you made that statement, you had some notes?

Mrs. PADOCH. Yes; I had some notes.

Mr. GILMAN. And then you transcribed the questions and answers.

Did they tell you whether they had transcribed the questions and answers at the time you undertook the interrogation?

Mrs. PADOCH. No. I never do this because——

Mr. GILMAN. Did Immigration tell you?

Mrs. PADOCH. Yes; yes.

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[1] See appendix 3

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Mr. GILMAN. Did they tell you whether they had some notes of the questions and answers?

Mrs. PADOCH. No. I had the notes but it was in my New York house.

Mr. GILMAN. Yes.

Mrs. PADOCH. So I didn't even recollect any names.

Mr. GILMAN. You did this from memory.

Mrs. PADOCH. From memory; yes.

Mr. GILMAN. Do you recall whether Seaman Medvid made any other request of you or gave you any other information you didn't put in the statement? Did he say anything else to you or make any other request to you that is not in this statement?

Mrs. PADOCH. I don't remember. It is hard to remember everything.

Mr. GILMAN. Take just a moment, take a quick look at your statement.

Did the sailor ask you for any help outside of the statement that was given that he gave to you?

Mrs. PADOCH. No. He just asked me to come immediately because "the people they don't understand me here. I cannot communicate with anyone." I don't know if this is in this statement. Probably not.

Mr. GILMAN. Did you also tell the officer who was with the sailor at the other end of the conversation, tell him that in no uncertain terms, that this sailor wanted political asylum?

Mrs. PADOCH. Yes; absolutely, but it is in this.

Mr. GILMAN. Do you know who you were talking to?

Mrs. PADOCH. Yes; I did. I did not know this time when it was but I know it was Mr.—because I asked him for his name. It was Mr. Ernest——

Mr. GILMAN. It was the officer in charge of that interrogation at the other end of the telephone?

Mrs. PADOCH. Yes; it was.

Mr. GILMAN. There was no question in your mind that he understood the answer——

Mrs. PADOCH. Yes. His line was not very good. That is why from time to time I asked him twice and it was vice versa, he asked me twice.

Mr. GILMAN. What did he ask you twice?

Mrs. PADOCH. There were several things about the name exactly.

MEDVID'S REQUEST FOR POLITICAL ASYLUM

Mr. GILMAN. Did he ask you twice about the asylum, the political asylum?

Mrs. PADOCH. Yes, he asked me twice.

Mr. GILMAN. You asked the sailor twice?

Mrs. PADOCH. Yes. I asked him twice.

Mr. GILMAN. What did you ask the sailor with regard to asylum?

Mrs. PADOCH. I asked him if he liked to say in this country and was asking for political asylum because it was the question, it was exactly the same question the officer stated to me.

Mr. GILMAN. Do you recall what his answer was on both occasions?

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Mrs. PADOCH. Yes; absolutely.

Mr. GILMAN. What was the answer?

Mrs. PADOCH. His answer was yes. He didn't repeat asylum. Asylum is pretty——

Mr. GILMAN. What did he say?

Mrs. PADOCH. He told just, yes, but without any hesitation. He told yes.

Mr. GILMAN. It was your understanding that the officer at the other end understood that answer?

Mrs. PADOCH. Absolutely. Impossible to understand different way.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

Mr. LANTOS. Congressman Feighan.

MRS. PADOCH'S CONVERSATION WITH INS OFFICIALS

Mr. FEIGHAN. Thank you, Mr. Chairman.

Mrs. Padoch, if I may follow up on that question from Mr. Gilman, after the telephone conversation, did you then have a discussion with any representative from the Immigration Service?

Mrs. PADOCH. That means after the questioning?

Mr. FEIGHAN. After the questioning.

Mrs. PADOCH. After the questioning, means if I understand you very well, because I just mentioned the questioning by the special agent from New York, from INS and then I got another call from Louisiana.

It was probably the interpreter who started to talk to me in the Russian language and because I am not fluent in Russian, I didn't understand very well, I asked him to speak English because I have difficulties with Russian language.

They asked me, do you want—all about the whole conversation. Do you like I repeat the conversation?

Mr. FEIGHAN. Was it a brief conversation?

Mrs. PADOCH. It was about 10, 12 minutes.

Mr. FEIGHAN. No. What I am trying to determine is, after you conducted the questioning of the Ukranian sailor, did you then have a conversation independently with the Immigration official who had been monitoring that conversation with the sailor?

Mrs. PADOCH. Not with INS. I spoke to someone who is in Louisiana, because I was thinking when I will leave for Catskill Mountains and my telephone was already disconnected, I asked if maybe somebody else could help Immigration with language and eventually to help the boy, then they decided to let him go.

So I spoke to him.

WHAT WILL HAPPEN TO SEAMAN MEDVID?

Mr. FEIGHAN. Mr. Kudirka, if I could ask you, based on your experience, which, as our chairman indicated, is perhaps the most analogous experience to Mr. Medvid, would you think it is reasonable for members of this committee to believe he is still on that ship?

Mr. KUDIRKA. I hope, yes. I hope. After a Soviet soldier attempted to defect in Kabul and after the Yurchenko affair, I hope that

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Russians are more careful with the life of Medvid. They are terrorizing him to make him hopeless.

You see, before I tried to escape, I was a friend with the crew members on ship. After I tried to defect and ultimately was returned to the Russian ship, I lost there all my friends. I don't know what they feel in their hearts, but everyone showed hate toward me. This is the moment of survival. Each has to show loyalty to the "motherland" and in turn hate toward "traitor."

"Kill him, the son of a bitch, kill!" Shouted my former friend. I was saved by one KGB man. His "stop, stop" saved my life. Why he did that, I don't know. He had his reasons. If not for him, I would have been killed immediately, not for real hate, but only to show loyalty to the will of Kremlin.

Now Mr. Medvid is under tremendous coercion. I offer a step to save him: please send me with an FBI man on the Russian ship. I want to have a pistol or a poison pill. In the case they would not let me back, I would kill myself. I would say to Medvid in Russian: I am Simas. I am experienced the same as you. You can trust me. Everything will be OK. Relax. Come with us and tell us exactly what you want to do: to stay in America or to return back. I hope he would trust me.

Mr. FEIGHAN. Thank you very much.

Congressman Smith, of New Jersey.

SOVIET MANUAL ON DEALING WITH DEFECTORS

Mr. SMITH of New Jersey. First of all, I want to thank our witnesses for appearing before us on such short notice. Their testimony certainly is compelling and provides a more ample record as to what really occurred and what may occur if Mr. Medvid is returned to the Soviet Union.

Now, Mr. Chairman, given some of the flattering press Mikhail Baryshnikov has been getting the recent puff piece by Barbara Walters and some of the other statements by Western media—I think many Americans may be seduced into thinking the Soviets somehow now can be trusted, they have turned a new leaf.

I think there are some problems in believing that Mr. Medvid is in no real danger and that his mind was changed without coersion.

I noticed in your comments, Mr. Kudirka, that you mentioned that each ship carries a manual with specific instructions as to how to deal with interrogation and intimidation procedures for defectors.

I wonder if you could amplify for the committee what some of the things are that are contained within that manual. Do they use drugs, for instance, physical beatings? What kind of threats are made against the families of would-be defectors?

METHODS OF INTIMIDATION USED ON DEFECTORS

Mr. KUDIRKA. Everything is possible, everything. Believe me, everything is possible. It is possible for drugs to be used. The doctor does what the KGB man or political commisar tells him to do. Same thing with the captain. He has no power, only KGB.

Beatings are another possibility. You can beat the body without leaving bruises nor blue marks. KGB is expert on that. They can

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crush man's liver without leaving outside marks. Then you start bleeding inside, and then you are finished.

They can put pressure on the fingers. My fingers were not broken, but my nose was. I had other cuts. After 2 weeks some parts of my body were swollen. The doctor doesn't touch you. This is the rule.

Mr. Shevchenko can tell you about their two faces. Here they play the game of good guys, as the good actors, but in reality they are cruel animals.

All Soviet leadership is the same. They are from the same school, having the same teachings. In the past, bosses were Beria, Suslov Andropov and now it is the same thing.

Man who is honest inside, cannot reach any higher status in the Soviet Union. Everything is filtered by spies. Spies are all around. Only after you completely sell your soul to the devil, you can climb higher—have money and a good life.

Mr. LANTOS. The Chair will make a suggestion to the committee. Since both the State Department and Immigration and Naturalization Service witnesses have to leave before noon, I would like to suggest we ask this panel to stay.

But I would like to get the Commissioner of U.S. Immigration and Naturalization Service and the Assistant Secretary of State on the witness stand now so we will have an opportunity to question them before they need to leave.

Is this agreeable to my colleagues?

We will be able to question later.

Mr. LEVINE. Mr. Chairman.

Mr. LANTOS. If I could ask Mr. Nelson——

Mr. LEVINE. Mr. Chairman.

Mr. LANTOS. Yes.

Mr. LEVINE. If I might make one request, there is one question I would like to ask Mr. Shevchenko because it may be central to something I might want to ask the Assistant Secretary.

Mr. LANTOS. Please go ahead.

Mr. LEVINE. Thank you.

COULD SEAMAN MEDVID HAVE BEEN A SOVIET PLOY?

I will preface it briefly simply by thanking you, Mr. Chairman, for calling this hearing and saying that I understand the time contraints and regret that they are so severe.

Let me limit myself to one question at this point to Mr. Shevchenko.

Mr. Shevchenko, yesterday in an interview, the President made a statement, and I would like to just quote him and ask you for your comments on it in the context of this entire situation.

He said, and clearly this was something that he was saying in a tentative fashion, but he said, in his exact words: "I have to say that coming as they do together, these three particular incidents, you can't rule out the possibility that this might have been a deliberate ploy or manuever."

Now, I think we have heard enough about this specific case to have a clear record in terms of your views about Mr. Medvid, but in the context of laying a foundation for Ms. Ridgway's testimony,

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could you or Mr. Kudirka tell us how we might be able to anticipate, how we can know whether an incident such as this, not necessarily this one, might be, as the President puts it, a ploy or manuever? How can we know when it is not?

Is there any way of knowing that?

Mr. LANTOS. A brief answer, Mr. Shevchenko.

Mr. SHEVCHENKO. I don't think there is any link between all these cases because they are all different, entirely different, and so if I may say so, I disagree with the President in this connection.

Mr. LEVINE. Thank you.

Mr. LANTOS. Thank you very much.

Mr. LEVINE. After the administration witnesses, Mr. Kudirka, I would like to explore with you this general question.

Mr. KUDIRKA. Of course, no connection.

Mr. LANTOS. Mr. Ritter, you have a comment and then we will move on to other witnesses.

Mr. RITTER. This also relates to questions I am sure we will have of the State Department.

Mr. Kudirka, you have gone through this tortuous situation personally and yet you are one man. We hear that Mr. Medvid is one man. The summit between the United States and Soviet Union involves two superpowers trying to lay the groundwork for world peace.

How do you respond to this kind of an appraisal?

Mr. KUDIRKA. If giving freedom to one man, trying to escape from a brutal regime, can destroy "the groundwork for world peace," tell me please how strong is the foundation for world peace? Suppose we had not one, but a dozen men, can we offer them on the altar of an imaginary peace? Can we give away the whole nations as Lithuania, Latvia, and Estonia?

No gentlemen, the goal of the State Department was not peace, but appeasement.

Mr. LANTOS. Thank you very much, Mr. Kudirka.

If I could ask Mr. Nelson to come up to the table, Secretary Ridgway.

INS HANDLING OF THE MEDVID CASE

Mr. LANTOS. We appreciate your appearing. I think it is extremely important because of the limitations of time that we move on to the issues which have not yet been explored.

Without objection, the written testimony of all three of our witnesses will be placed in the record.

And we particularly appreciate your appearance, Secretary Ridgway. You returned from Moscow yesterday, and I know you are suffering from jet lag.

I would like to begin with Mr. Nelson. Your statement will be entered in the record. And could I, to facilitate and expedite things, ask you to deal with only two or three matters if you would.

First of all, we do not wish you to recapitulate for us the procedures in effect. We have that in writing. We understand that. We would like you to deal with the following matters.

No. 1, what specific mistakes were made by individuals within your jurisdiction and what disciplinary action is contemplated?

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No. 2, what procedures do you specifically intend to undertake to prevent future reoccurrence of a similar disaster?

And finally, a brief explanation of your statement to the Senate committee a couple of days ago that you are very proud of the way this thing has been handled, because if you are, there are not many other people who are proud of it.

There is an outrage in the Congress and in the country. We would hope that you are part of that outrage and do not express pride in the handling of this matter.

So if you could address these three issues, we would be most grateful.

STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. NELSON. Thank you, Mr. Chairman.

I appreciate our testimony being included in the record, and, as indicated in the testimony, attached thereto are the procedures in effect.

I would also like to add to the record at this time, and will ask my aide to submit to the clerk for inclusion in the record several additional items I believe will be of assistance.

Mr. LANTOS. Without objection, they will be placed in the record.[1]

Mr. NELSON. That is a copy of the order of the U.S. Court of Appeals for the District of Columbia that was entered the other day.

The second item would be the order of the U.S. District Court for the District of Columbia in this matter which includes a statement issued by the State Department going through some detail of the attempts to get Mr. Medvid off the ship and interview him.

Third is some testimony of Mr. Brandemuehl of INS who was a participant in the interviews of Mr. Medvid. I am talking now about after removal from the ship.

This material had been kept in camera initially by the court. It has now been unsealed and provided to the Senate yesterday. That will be provided to you today.

So I would submit those for the record, if I might.

Mr. LANTOS. They will all be placed in the record without objection.

Mr. NELSON. I understand also, and I will defer that to the State Department, that we have now received either a report or reports from the U.S. Navy doctor and the U.S. Air Force psychiatrist who participated in the interviews of Medvid, and I would hope those would be made available to this committee for your deliberation, also.[2]

I will summarize my testimony, Mr. Chairman, and avoid those areas but I think it is important that I stress three areas in this matter.

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[1] See appendix 4.
[2] See appendixes 6 and 7.

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CURRENT INS PROCEDURES

First, the existing asylum procedures. Obviously, the Congress, along with the executive branch, wants to look at existing procedures for these types of incidents. That is the attachment to the document to the testimony.

Second, a review of the INS handling of the matter initially.

And, third, a recounting of the chronology of the efforts to reinterview, the successful efforts to reinterview Mr. Medvid in a neutral setting.

I might stop at that point and allude to your last point. You made reference to my earlier testimony in the Senate, which was basically the same here, about my statement about pride in the way this was handled. I am speaking only of pride in how it was handled after the U.S. Government learned that Mr. Medvid had been mistakenly returned initially and how we undertook all due operations, including the ability, if necessary, to use force to remove him in order to interview him, kept him in our custody for 24 hours, had medical, psychological, psychiatric, and other interviews relating to the matter and I believe that was very effectively handled by the State, Justice, Coast Guard, Treasury Departments, and Customs.

So that part is what I am alluding to.

Mr. LANTOS. Mr. Nelson, since you did allude to that, let me just make the following observation. There are many people in the Congress and the Senate, which is, as you know, acting on this matter this afternoon, who do not believe that, subsequent to the initial series of horrendous mistakes, the thing was handled so brilliantly. The options our Government had was not to keep him for 24 hours or return him. There were plenty of other options. It is the view of many of us that you should have chosen some of those many other options rather than the one that was chosen.

So if your pride is restricted only to the period of handling following the interview, some of us are equally in disagreement with you on that.

Please go ahead.

Mr. NELSON. That is your privilege, of course, Mr. Chairman, but I stick by those comments and I believe the other agencies of this Government likewise do.

We believe that the existing procedures for handling potential asylum claims, the ones attached, certainly specifically relating to Soviet bloc people, are fundamentally sound and that there are no significant changes that need to be mandated by this event.

INS RECOMMENDATIONS TO IMPROVE EXISTING PROCEDURES

However, we are looking, and this goes to one of your questions, I have designated a task force of INS people to have a report to me by the 19th of November to give me recommendations as to what, if any, changes in existing asylum procedures should be made. When we review that within the executive branch, I am sure we will share that with Congress.

We, of course, reiterated to all our people the existing instructions for handling these cases. Had these procedures been followed, as you indicate, I don't want to reiterate in detail, regarding super-

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visory contact the head of the local agency in New Orleans up to headquarters and to the State Department, and those should have been followed as we indicated, we believe that there would have been an earlier complete interview and they would not have returned them prematurely.

So we certainly believe, that the existing procedures are sound. Again, I would refer the committee to the attachment to lay those out.

ACTIONS OF THE BORDER PATROL

Now, also the issue—I know Mrs. Padoch testified here as she did in the Senate, as I testified there. I would like to reiterate, the bottom of page 4, there clearly was confusion and misunderstanding between Mrs. Padoch and the Border Patrol agent as to what the translation was saying. They obviously took the initiative, properly, to contact an interpreter to try to find out what was going on.

In their opinion, they did not get a claim of asylum, but nevertheless, as we indicate on the bottom of page 4, there were enough warning signs in this matter that irrespective of whether Mrs. Padoch was accurate or other people were accurate or we are in between, that is not the issue. There that should have mandated exploration of what is called the immediate action disposition under our guidance.

Certainly his Soviet nationality would somewhat rebut the question that he was a routine ship jumper. There were written references to moral and political reasons. Those words alone certainly warranted further investigation to clearly understand his intentions.

If there were problems, as there appeared to be with either the understanding of the interpretation or the telephone connection itself, again enough questions should have been raised that they would have retained him in custody until those problems were corrected, and of course finally the guidelines in existence, we think, mandated our people to go up the line with supervisory review.

Now, I think after it came to our attention that there was some question about this man, the U.S. Government, as soon as we learned about this took steps on our own initiative, not due to any outside pressures or exposition of this, but we took the steps very rapidly, upon learning of him, to initiate the efforts, successful efforts, to remove Mr. Medvid from the ship.

For example, I learned of this in the midafternoon on Friday, October 25. We immediately ordered Border Patrol agents to board the Soviet vessel to try to return Medvid to shore. They attempted. That was unsuccessful, but those agents and later other agents from the State Department, Coast Guard and others were onboard consistently throughout the time until Mr. Medvid was removed.

We made initial contact with the Coast Guard to ask if they would take steps to ascertain, whether to prevent the vessel from departing. The State Department shortly thereafter, when they got into it, formally ratified that, and the Coast Guard took all steps to assure the ship did not depart.

We immediately notified the Department of State here. Within a matter of hours, State Department personnel were dispatched to

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New Orleans from Washington and similarly top U.S. Immigration officials were dispatched to New Orleans.

During the entire weekend, while we were in extensive negotiations—and Ms. Ridgway will comment, I am sure, more on that—with the Soviets, we made it clear we would remove Mr. Medvid from the ship and, if necessary, would use necessary force to accomplish that. They finally did agree to remove him first to a U.S. Coast Guard cutter.

The interviews took place. We had the Navy doctor and the Air Force psychiatrist involved also. Extensive interviews took place.

It was our decision, the U.S. Government decision that Mr. Medvid should have a night's rest, and be transferred to shore to conclude the interview before any final decision was made. That was done over great objection from the Russians.

So he spent the night alone in a room by himself. He had a psychiatric examination, a thorough medical examination, and a night's rest.

He repeatedly, throughout the entire time, on the Coast Guard cutter and the morning ashore, indicated repeatedly and emphatically that he wanted to return home. It was made clear by the questions of Mr. Sell, who did all the examination—Mr. Brandemuehl was present—many times that he had the opportunity to remain in the United States should he choose.

It was determined after all of these examinations that I alluded to that the mental and physical state of Mr. Medvid was satisfactory.

The interview could be resumed. It was so, and thereafter, with the factors I enumerated, that it was the consensus of the U.S. team and all of them who thoroughly reviewed it that Mr. Medvid was competent to make the decision concerning whether to remain in the United States. And, therefore, he did sign a written statement in Russian denying any claim to asylum and requesting he be allowed to return.

Just in conclusion, I know the time is running out, in summary, the three points are basically, asylum procedures we believe are fundamentally sound. We welcome the Congress review of that. It is a good system, certainly relating to handling Soviet bloc people, but we are, as indicated, conducting a thorough review as to whether any changes should be made in that regard.

As I said earlier, I think we acknowledge the errors initially, certainly good-faith errors, but they were errors of judgment and failure to follow procedures.

You asked about disciplinary action. That review is under way. I requested the line operations to give a recommendation to me by the end of the day, November 12.

We have submitted a very thorough report to the Attorney General that is under review within the Department of Justice and that, of course, is one of the issues.

Once I receive the recommendations regarding disciplinary action, I will review those, make my conclusions, notify the Attorney General and we will then make a determination. So that will happen early next week.

But, as I have indicated, I will reiterate, after the unfortunate early return of Mr. Medvid, we believe that again, in a 24-hour

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period, under full U.S. control, extensive interview, mental and physical examinations—and I would ask the committee review these papers, as you receive them, that have been submitted and examine the ones that should be coming shortly, the examination ones—we are convinced we followed all due process and procedures.

The three district courts—Philadelphia, Washington, and New Orleans—certainly have affirmed that as well as the circuit court of appeals, and we believe, we stand by that, this was after the initial problems with his case that were unfortunate and mishandled, we believe it was properly handled and that the conclusions reached were that he in fact voluntarily did want to return.

Mr. LANTOS. Thank you, Mr. Nelson.

[Mr. Nelson's prepared statement follows:]

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PREPARED STATEMENT OF ALAN C. NELSON, COMMISSIONER, U.S. IMMIGRATION AND NATURALIZATION SERVICE

Chairman and Members of the Subcommittee,

I am pleased to be with you today to discuss the case of Soviet crewman, Miroslav Medvid and to review United States asylum procedures.

This testimony focuses on three areas. First, a summary of existing U. S. government procedures for handling potential asylum cases, specifically relative to crewmen from Soviet bloc countries. Second, a review of the INS handling of the matter. Third, a recounting of the chronology of the efforts to reinterview Mr. Medvid in a neutral setting.

We believe the existing procedure for handling potential asylum cases for crewmen from Soviet bloc countries are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If these existing procedures, which require supervisory review, contact with INS headquarters and the Department of State, had been followed, we believe Mr. Medvid would not have been summarily returned to the shipping agents and hence to the soviet vessel without a thorough interview and determination of his intentions. The existing operating instructions are attached.

As indicated mistakes were made in the initial handling of the Soviet sailor, Miroslav Medvid, who deserted his vessel, the M/V Marshal Konev, in New Orleans, Louisiana, on October 24, 1985. When the fact of Mr. Medvid's premature return to the Soviet cargo ship became known, actions were promptly initiated by the Immigration and Naturalization Service and in conjunction with the Departments of Justice and State, the National Security Council, the U. S. Coast Guard, and the U. S. Customs Service to assure that Mr. Medvid would have an opportunity to claim asylum after due deliberation in a neutral setting. Through careful and vigorous action, the circumstances were achieved whereby Mr. Medvid was thoroughly interviewed and examined by United States officials in a neutral setting to ascertain his decision on remaining in the United States or returning to the Soviet Union.

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The Incident

The Soviet crewman, Miroslav Medvid, arrived in the U. S. October 24, 1985, on board the soviet vessel M/V Marshal Konev at Belle Chasse, Louisiana. The crew was inspected by the Immigration Service, and with the exception of four officers, was denied entry and detained on board in the late afternoon. Mr. Medvid subsequently jumped over the side of the vessel and swin to shore. Mr. Medvid was given a ride into New Orleans, Louisiana, by a local citizen and delivered to the New Orleans Police. Mr. Medvid was then taken to the New Orleans Harbor Police Headquarters. The U.S. Border Patrol had been contacted and took custody of Mr. Medvid and transported him to the Border Patrol Station in New Orleans in the early evening. It was ascertained by the Border Patrol agents that Mr. Medvid was from the Soviet Union and had deserted his vessel. An INS interpreter with capacity in Ukranian was contacted in New York City to assist in the interview of Mr. Medvid. The processing officer, after a lengthy telephonic conversation between the interpreter, Mr. Medivd and himself, made a determination that the Soviet sailor was not seeking political asylum, but was only a disaffected crewman. The officer then contacted the shipping agency for the vessel, who sent two employees to the Border Patrol station to return the Soviet sailor to his vessel. The shipping agency employees took charge of Mr. Medvid shortly before midnight on October 24.

Procedures for Handling Potential Asylum Claimants

In the early 1970's, an incident involving the return by U.S. officials of Simus Kidurkus, a Soviet seaman of Lithuanian ancestry, to his Soviet fishing boat triggered a review within the U.S. government of procedures regarding forcible repatriation. As a result, personnel in all federal agencies likely to encounter defecting seamen were advised of procedures to preclude forcible repatriation and the appropriate roles of the State Department and the Immigration and Naturalization Service in handling asylum claims from such persons. Initially outlined through field directives and operating instructions, procedures for handling asylum claims by INS officers were established by regulations published in

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December 1974. (First published in 8 CFR Part 108, these regulations were revised following the passage of the Refugee Act of 1980 as 8 CFR Part 208). The procedures established under the accompanying operations instructions have specific provisions for claims that may arise from crewmen from Communist bloc countries. Immigration inspectors are the officers who most often encounter crewmen who express an unwillingness to return to their home countries, but INS investigators and Border Patrol agents also have initial contacts with such persons.

Service operations instructions call for special procedures in so-called "immediate action" cases, which include among others cases involving Soviet nationals; diplomats; nationals of a Communist country who are present as part of an official visit, exchange program or state owned business or enterprise activity; or persons whose asylum request is politically sensitive or involves the possibility forced repatriation. In such cases Service officers are to contact the local INS and District Directors and give descriptions of the individual case, the nature of the claim and why it is considered an immediate action case.

The District Director makes an assessment of the case and then contacts the Associate Commissioner for Examinations in the INS Central Office, if he or she concludes that the alien's claim should be handled on an immediate action basis. The Associate Commissioner for Examinations in turn is responsible to contact the State Department Operations Officer.

After further interviewing of the claimant and the completion of an asylum application which the applicant signs, information is provided by telephone and otherwise as expeditiously as possible to the Bureau of Human Rights and Humanitarian Affairs of the Department of State. That bureau provides an advisory opinion on the asylum request, which is considered by the District Director in making his or her final decision on the asylum claim. In these and all other claims, the fundamental basis for a grant of asylum is that the person has established that he or she

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has a well-founded fear of persecution on account of race, religion, nationality, membership on a particular social group, or political opinion, if he or she should be returned to his or her country of nationality or of last habitual residence.

Service personnel frequently encounter persons who are not fluent in English or any other language known to them. Consequently, they will seek assistance from INS interpreters, other Service personnel, or local persons with a capacity in the language of the alien. The effort is made to give an asylum applicant a full opportunity to articulate the basis on which he or she fears return to his or her homeland.

These existing procedures were not followed in that the District Director was not contacted, no supervisory review of the decision to return the crewman was sought and neither the INS Central Office nor the Department of State was informed. If that had been done, we believe Mr. Medvid would not have been summarily returned to the shipping agent and hence to the Soviet vessel without a thorough interview and determination of his intentions.

Routine procedures were followed until the interrogation phase of the case by the Border Patrol agents. As the interview was conducted through the interpreter, several warning signs should have mandated exploration of the "immediate action" disposition pursuant to the operating instructions for political asylum:

- Mr. Medvid's Soviet nationality was an unusual factor and should have raised questions about the assumption that he was a routine ship jumper.

- When Medvid claimed he did not want to return to the Soviet Union for "moral and political" reasons, further investigation was warranted to assure that he understood his options rather than concluding that he was not seeking political asylum and turning him over to the shipping agent.

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- If there were problems with the quality of the interpretation or complications due to the telephonic connection over which the questions and answers had to be communicated, the Soviet sailor should have remained in INS custody until these problems were corrected.

- Finally, specific guidelines were available in the New Orleans Border Patrol Station setting forth procedures for handling Soviet nationals.

We believe that the existing procedures covering the handling of crewmen who indicate an unwillingness to return to their home country are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If they had been followed, we are convinced that Medvid would not have been returned to his ship without further interviewing and review at a higher level by both INS and the Department of State.

In light of the Medvid incident, INS headquarters has cabled a copy of such operating instructions to all INS offices, both to emphasize the existing asylum procedures and to seek any suggested improvements.

The existing instructions are comprehensive; however, it is important to use this incident as an opportunity to thoroughly review the guidelines and consider changes in order to avoid any future similar incidents. An INS task force has been constituted for this purpose, with a preliminary report due by November 15, 1985. Training procedures will also be reviewed by this task force.

Actions Leading to the Reinterview of Mr. Medvid

I have dwelt at some length on the initial processing of Mr. Medvid, because questions have been raised about existing INS procedure and their appropriateness and sensitivity to apolications from persons such as this Soviet crewman. Now I would like to detail what actions were taken, once the summary return of Mr. Medvid came to INS supervisory attention.

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Mid-afternoon on Friday, October 25, I became aware of this situation following calls from the New Orleans District Office and the New Orleans Border Patrol sector headquarters to the Associate Commissioner for Enforcement. At that point, the Southern Regional Commissioner, located in Dallas, Texas had already ordered Border Patrol agents to board the M/V Marshal Konev and try to return Mr. Medvid to the shore. This was unsuccessful. The Associate Commissioner for Enforcement instructed New Orleans to contact the U.S. Coast Guard and ask that they dispatch a vessel to the scene to insure that the Soviet ship not depart. This was done. I directed that the Department of State be informed and personally contacted the Deputy Attorney General. We ordered a debriefing of the Border Patrol agents involved and subsequently a report from the INS contract interpreter from New York City.

The Department of State dispatched personnel from the Office of Soviet Affairs and the Office of the Legal Advisor, who arrived in New Orleans Friday evening. The Assistant Commissioner for the Border Patrol and his Deputy went to New Orleans to join the Southern Regional Commissioner, to ascertain precisely what had happened, and seek further opportunity to interview the Soviet seaman away from his ship. Negotiations with the captain of the Soviet vessel and later Soviet officials in New Orleans were conducted by these State Department and INS officials.

Throughout the weekend of October 26-27, senior INS managers and myself worked with personnel on the scene and with the National Security Council, the Departments of Justice, State, Transportation and Treasury officials in Washington to plan to secure the removal of Mr. Medvid to a neutral site and to enable us to interview him and ascertain his considered decision on remaining in the United States or returning to the Soviet Union. On Monday, October 28, the Soviet authorities agreed to the transfer of Mr. Medvid from the Soviet vessel to a location where he could be questioned by U.S. officials in a neutral atmosphere.

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That same afternoon, Miroslav Medvid was transferred to the U.S. Coast Guard vessel Salvia accompanied by the Soviet ship captain and a Soviet diplomatic representative. In the interview conducted by a State Department official with an INS representative present. Through an interpreter Mr. Medvid stated his decision to return to the U.S.S.R. and not to remain in the United States. However, to insure Mr. Medvid had time to reflect on his decision in a calm setting, and after consulting with DCS command center, a decision was made to take him ashore for a physical examination and a night's rest.

Mr. Medvid was taken to the Naval Support Activity at Algiers, Louisiana, late evening of the 28th and subsequently received a thorough medical examination. A psychiatric examination was also initiated that evening, and was continued in the morning of the 29th. Following a night of rest at the Naval facility where Mr. Medvid was alone, a second interview was conducted during mid-morning on the 29th. Mr. Medvid emphatically repeated his decision to return to the Soviet Union, adding that he desired to see his family. In both interiews, it was carefully explained to Mr. Medvid that if he feared returning to the Soviet Union, he could remain in the United States without any punishment or imprisonment here.

On Tuesday, October 29, 1985, prior to the resumption of the interviewing, a thorough review of the situation was held among U.S. officials on the scene in New Orleans and persons at the command post at the Department of State. It was determined that the Soviet sailor's mental and physical state was satisfactory and that the interview should be resumed. At the conclusion of the interview, it was the consensus of the United States team that Mr. Medvid was competent to make a decision concerning whether to remain in the United States. Following a final consultation with the Department of State and other high level U.S. officials, Mr. Medvid signed a statement denying any claim to asylum in the U.S. and requesting that he be allowed to return to the Soviet Union. After that he was returned to the M/V Marshal Konev.

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Conclusion

It should be clear from my statement that there were errors in the performance of the Service officers who initially processed Mr. Medvid and decided upon his return to the Soviet vessel. Mistakes in judgement were made; existing procedures for handling potential asylum claimants were not followed.

However, the procedures and our overall system for the adjudication of asylum claims are fundamentaly sound. It is a good system. Nevertheless, we are currently conducting a very thorough review of the procedures to determine whether we should amend existing operating instructions to ensure that any person suggesting an unwillingness to return to his country will be interviewed completely to elicit the basis for a well-founded fear of persecution. I can assure that all of our Service officers are on notice today of what is expected of them in this regard.

I am proud of how the United States Government responded to this situation, once we learned of the return of Mr. Medvid. I believe that the Departments of Justice and State and others did all that we could to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here as an asylee in the United States. Extensive interview and mental and physical examinations were conducted over a 24 hour period in a setting under full U.S. control. Following those interviews and examinations, it was the strong belief of all U. S. government respresentatives that the expressly stated and signed written statement of Mr. Miroslav Medvid that he had decided to return to the Soviet Union represented the true facts and proper resolution of this issue.

That completes my testimony on this matter. I will be glad to answer questions that you may have.

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ATTACHMENT

208.8 PROCESSING ASYLUM REQUEST. IMMEDIATE ACTION CASES

(A) DEFINITION

(I) A REQUEST (OR IMMINENT REQUEST) FOR ASYLUM WHICH IS POLITICALLY SENSITIVE OR INVOLVES THE POSSIBILITY OF FORCIBLE REPATRIATION.

(II) ANY NATIONAL OF THE SOVIET UNION;

(III) ANY NATIONAL OF EAST GERMANY, ROMANIA, POLAND, HUNGARY, CZECHOSLOVAKIA, BULGARIA, MONGOLIA, CUBA, ALBANIA, THE PEOPLE'S REPUBLIC OF CHINA, NORTH KOREA, VIETNAM, LAOS, OR CAMBODIA, WHO IS PRESENT IN THE UNITED STATES AS PART OF AN OFFICIAL VISIT, FORMAL CULTURAL OR ATHLETIC EXCHANGE, EXCHANGE STUDENT PROGRAM OR STATE OWNED BUSINESS OR ENTERPRISE ACTIVITY, OR WHO IS IN TRANSIT THROUGH THE UNITED STATES IN SUCH CAPACITY;

(IV) ANY FOREIGN DIPLOMAT, FOREIGN CONSULAR OFFICER, OR FOREIGN OFFICIAL, REGARDLESS OF THE COUNTRY.

(V) ANY OTHER ALIEN WHO ASSERTS THERE IS A SERIOUS THREAT OF FORCIBLE REPATRIATION TO HIMSELF OR TO HIS FAMILY.

(VI) ANY REQUEST FOR ASYLUM WHICH FOR OTHER REASONS PRESENTS SPECIAL PROBLEMS CALLING FOR PROMPT ATTENTION.

(B) NOTIFICATION. WHEN IT COMES TO THE ATTENTION OF ANY SERVICE EMPLOYEE THAT A PERSON DESCRIBED IN PARAGRAPH (A) ABOVE MAY BE SEEKING ASYLUM, THE DISTRICT DIRECTOR WILL BE

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NOTIFIED IMMEDIATELY AND FURNISHED ALL THE PERTINENT FACTS OF THE CASE, INCLUDING THE ALIEN'S IDENTITY, NATIONALITY, NEWSWORTHINESS OR PROMINENCE, AND REASON(S) GIVEN FOR REQUESTING ASYLUM. IF THE DISTRICT DIRECTOR AGREES THAT THE ASYLUM APPLICANT FALLS INTO THE IMMEDIATE ACTION CATEGORY, HE WILL EXPEDITIOUSLY RELATE THE FACTS OF THE CASE TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, OR THE CENTRAL OFFICE DUTY OFFICER, AND THE APPROPRIATE REGIONAL OFFICIAL. THE ASSOCIATE COMMISSIONER, EXAMINATIONS, OR THE CENTRAL OFFICE DUTY OFFICER WILL ALERT THE SERVICE'S PUBLIC INFORMATION OFFICER AND DEPARTMENT OF STATE'S OPERATIONS OFFICER, TELEPHONE 202-632-1512 OF THE REQUEST FOR ASYLUM.

(C) INTERVIEW OF ASYLUM APPLICANT. AFTER NOTIFYING THE ASSOCIATE COMMISSIONER, EXAMINATIONS, THE DISTRICT DIRECTOR WILL IMMEDIATELY ASSIGN AN OFFICER TO INTERVIEW THE ASYLUM APPLICANT UNDER OATH USING FORM I-589. THE APPLICANT WILL BE GIVEN AN OPPORTUNITY TO MAKE ANY STATEMENT OR PRESENT ANY EVIDENCE HE/SHE FEELS TENDS TO SUBSTANTIATE THE CLAIM OR FEAR OF PERSECUTION UPON RETURN TO HIS/HER COUNTRY OF NATIONALITY OR LAST HABITUAL RESIDENCE. THE ANSWERS GIVEN AND ANY EVIDENCE PRESENTED BY THE APPLICANT WILL BE MADE PART OF THE APPLICATION, AFTER WHICH THE APPLICANT WILL BE INSTRUCTED TO REVIEW THE FORM AND SIGN IT.

(D) SHELTER AND SUSTENANCE OF ASYLUM APPLICANT. IF IT APPEARS NECESSARY, OR THE ASYLUM APPLICANT REQUESTS IT, HE SHE WILL BE REFERRED TO THE APPROPRIATE VOLUNTARY AGENCY FOR SHELTER, SUSTENANCE, OR OTHER SIMILAR NEEDS.

(E) REQUEST FOR BHRHA ADVISORY OPINION. UPON COMPLETION OF THE INTERVIEW AND EXECUTION OF THE I-589, THE DISTRICT DIRECTOR WILL TELEPHONE ALL FACTS OF THE CASE TO THE BHRHA (202-632-2551 OR 632-2570) AND REQUEST AN ADVISORY OPINION. BHRHA WILL FURNISH ITS OPINION TO THE ASSOCIATE

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COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, WHO WILL RELAY IT TO THE DISTRICT DIRECTOR. UPON RECEIPT OF THE BHRHA ADVISORY OPINION, THE DISTRICT DIRECTOR WILL ADJUDICATE THE CASE.

(F) MATERIAL CHANGE OF FACTS. IF AT ANY TIME DURING THE PROCESSING OF AN IMMEDIATE ACTION CASE THERE IS A MATERIAL CHANGE IN THE FACTS OF CIRCUMSTANCES OF THE ASYLUM REQUEST, THEY WILL BE FURNISHED EXPEDITIOUSLY TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE.

(G) PUBLIC INFORMATION. THE DISTRICT DIRECTOR HAVING JURISDICTION OVER THE ASYLUM REQUEST AND THE PUBLIC INFORMATION OFFICER IN THE CENTRAL OFFICE AND APPROPRIATE REGION WILL BE RESPONSIBLE FOR ALL OFFICIAL STATEMENTS RELATING TO IMMEDIATE ACTION CASES. SPECIAL CARE WILL BE TAKEN TO ENSURE THAT OFFICIAL STATEMENTS ON ANY GIVEN CASE ARE CONSISTENT WITH PREVIOUS SERVICE PRONOUNCEMENTS ON SUCH CASE. ADDITIONALLY, SPECIAL CARE SHOULD BE TAKEN THAT OFFICIAL SERVICE STATEMENTS DO NOT CONVEY ANY IMPRESSION OF PREJUDGMENT IN THE CASE.

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Mr. LANTOS. Before I call on Secretary Ridgway, there is one clarification I would like to ask you to make. The testimony of Ambassador Shevchenko—and the view of some of us on this committee, is that the initial experience of sailor Medvid with United States authorities—namely, twice being returned to the ship from which he jumped for his life—the second time being returned handcuffed and dragged by six Russians, kicking and screaming—so dramatically destroyed his confidence in our credibility that in a new interview situation with his own captain present, he was still so intimidated that it was absurd to expect he would then tell us exactly what he wanted to do.

I wonder if you could address that issue.

Mr. NELSON. Obviously, Mr. Chairman, I would think that a psychiatrist or doctors could better comment on that. We can all analyze and speculate on the whole issue of coercion and whatever. I realize that certainly all of those are possibilities.

Nevertheless, he was examined by the doctors as indicated. He repeatedly made the statements that he wanted to go home.

I guess the question is, what course did we have under those circumstances when he repeats that? Do we say, despite his intentions, noted intentions, we are so convinced he is coerced we ought to hold him against his will at that point?

One of the issues the state might address is the reciprocity situation of a United States person in the Soviet Union, if they might say, despite their protestations to go back to America, the Soviets ought to be able to hold them. There are a lot of questions there. But we believe the opportunity was reviewed thoroughly.

Mr. ACKERMAN. On that point, Mr. Chairman——

Mr. LANTOS. I think we wish to get Secretary Ridgway on, because she has to go to the White House. I think it is important to give her an opportunity.

We are delighted to have you, Secretary Ridgway.

STATEMENT OF ROZANNE L. RIDGWAY, ASSISTANT SECRETARY, BUREAU OF EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

I realize we are short on time, and I do want to make myself available for questions. If you don't mind, I would do two or three highlights out of the prepared statement, and then avail myself of questions.

Mr. LANTOS. Please proceed.

Ms. RIDGWAY. The detail is covered in the statement. I would simply like to underscore three points.

First, from the moment the State Department was informed of this case, our objective was clear and straightforward—to remove seaman Medvid from the Soviet ship in order to interview him in a nonthreatening environment under our control to determine whether he wished to remain here or return to the Soviet Union.

The operating assumption of the Department of State, the Department of Justice, and the White House was that seaman Medvid's behavior in jumping from his ship, and his resistance to being

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returned to it, constituted presumptive evidence of his desire to remain in the United States.

Second, decisions taken in this case, including the final decision to permit seaman Medvid to sign a statement and to return to his ship, were made at the highest levels of the White House, the Department of State, and Department of Justice.[1]

Third, that it is and will continue to be the general policy of the U.S. Government not to force individuals to return to a country where they would be persecuted on account of race, religion, ethnic origin, membership in a particular social group, or political opinion. This principle remained fully operative throughout our involvement in the case of seaman Medvid.

I would like to underscore the fact that at every point in the Department of State's involvement in this case, our paramount concern was the welfare of seaman Medvid. We were determined to ensure that he had an opportunity freely to express his preferences. Over a period of days, extraordinary measures were taken to ensure that he was given that opportunity, first aboard the U.S. Coast Guard cutter, and then again at the U.S. Naval facility after he had had a good night's rest.

We were, obviously, not able to recreate seaman Medvid's original frame of mind of October 24, nor will any of us ever know what pressures may have been exerted on seaman Medvid while he was on the Soviet ship prior to his transfer to our custody on October 28; nor did we ever discount the fact that such pressures may have influenced seaman Medvid's final decision.

None of us is under illusions about the nature of the repressive Soviet Government and its willingness to use coercion and threats to control its people. From the outset, there was always the possibility that seaman Medvid might indicate that he wished to return to his ship and to the U.S.S.R.; and that, if he did so, we would have to respect that choice and whatever considerations led to that decision.

In our questioning of seaman Medvid, he repeatedly expressed his desire to return to the U.S.S.R., and there was no doubt on the part of the U.S. medical doctors who examined him about his ability to make such a decision.

All officials involved in the case, both in Washington and New Orleans, concurred that the United States should allow seaman Medvid to return to the Soviet ship.

It is, of course, possible for anyone to second-guess whether we could have or should have attempted to keep seaman Medvid longer than circumstances calculated to try to overcome presumed Soviet pressures. That is a judgment call.

I would only ask the consideration also be given to whether the United States wishes to detain a foreign citizen against his repeatedly expressed wishes, recognizing that only that citizen, in cases such as this, can truly weigh the risks taken for himself and for others.

Those are the opening and concluding general principles of a far longer statement, Mr. Chairman. I am, of course, here because I know of your interest and your concern, and would take questions.

[The prepared statement of Ms. Ridgway follows:]

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[1] See appendix 2.

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PREPARED STATEMENT OF HON. ROZANNE L. RIDGWAY, ASSISTANT SECRETARY OF STATE FOR EUROPEAN AND CANADIAN AFFAIRS

Mr. Chairman and Members of the Committee. I welcome the opportunity to testify today about the role of the Department of State in the case of Soviet Seaman Miroslav Medvid. This case, which focuses attention on the fundamental issue of political freedom, has drawn the attention of many concerned Americans and Members of Congress.

Before I describe in detail the role we played in this case, I would like to underscore three important points:

-- First, that from the moment we were informed of this case, our objective was clear and straight-forward: to remove Seaman Medvid from the Soviet ship in order to interview him in a neutral, non-threatening environment under our control to determine whether or not he wished to remain here or return to the USSR. The operating assumption of the Department of State, the Department of Justice and the White House was that Seaman Medvid's behavior in jumping from his ship and his resistence to being returned to it constituted presumptive evidence of his desire to remain in the United States.

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-- Second, that decisions taken in this case, including the final decision to permit Seaman Medvid to sign a statement and return to his ship, were made at the highest levels of the White House, the Department of State and the Department of Justice.

-- Third, that it is and will continue to be the general policy of the U.S. Government not to force individuals to return to a country where they would be persecuted on account of race, religion, ethnic origin, membership in a particular social group, or political opinion. This principle remained fully operative throughout our involvement in the case of Seaman Medvid.

ROLE OF THE DEPARTMENT OF STATE

At 3:40 p.m. Friday, October 25, when it was first informed of this case by the Border Patrol Section of the Immigration and Naturalization Service (INS), the Department of State immediately requested the U.S. Coast Guard and Treasury Department to take steps to prevent the departure of the M.V. Konev from the Belle Chasse area of the port of New Orleans. We also immediately dispatched a Russian-speaking Foreign Service Officer and an Assistant Legal Adviser to the scene.

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The Department of State representative arrived in New Orleans and boarded the M.V. Konev at approximately 10:30 p.m. CST that night; from then on, the United States had a team of at least six officals aboard the Soviet vessel at all times until Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on October 28. This team included representatives of the Department of State, the Immigration and Naturalization Service (INS), the Treasury Department (Customs Service) and a U.S. Navy doctor. From the evening of October 26 an expert interpreter retained by the Department of State was also on the scene to ensure there would be no difficulty in communicating with Seaman Medvid. Of Ukrainian heritage himself, this interpreter was fluent in both Russian and Ukrainian and was able to communicate with Seaman Medvid in both languages.

Prior to our arrival on the scene, INS officials had observed Seaman Medvid on the M.V. Konev during the afternoon of Friday, October 25, and they reported that he was in bed and appeared to be sedated; there was a bandage on his left wrist and it was reported that Seaman Medvid had inflicated a laceration on his forearm. The Department of State representative first saw Seaman Medvid on Saturday, October 26, at approximately 3:00 p.m. CST. A U.S. Navy doctor conducted a preliminary physical examination and reported that Seaman Medvid was alert and that he appeared to be in generally good condition; he did not appear to be sedated or under the

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influence of drugs. During that examination Seaman Medvid told the Department of State representative that he wished to return to the USSR and asked whether we had any questions for him. Our representative replied that we would reserve our questions until we could arrange a formal interview off the Soviet vessel.

From the start we made clear to the Soviets that Seaman Medvid had to be removed from the Soviet ship to be interviewed in a non-threatening environment under our control. In diplomatic discussions with the Soviet Embassy, we made clear that if Soviet officials did not agree to this demand, we were prepared to remove Seaman Medvid from the M.V. Konev by force if necessary. As a result of these diplomatic discussions it was agreed that Seaman Medvid would be transferred from the M.V. Konev to the U.S. Coast Guard Cutter Salvia for an interview in an environment where he would be free from coercion. The transfer occurred without incident at approximately 4:30 p.m. CST on Monday, October 28 after Hurricane Juan, which was passing over the New Orleans area, abated. Upon arrival on the Salvia, Seaman Medvid was offered some refreshment and an opportunity to rest or relax, which he declined.

The interview was conducted by a State Department representative in the Ward Room of the Salvia. Also present were a U.S. Navy medical doctor, an INS official, our

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interpreter, and four Soviets: two officials from the Soviet Embassy, a Soviet doctor and the Master of the M.V. Konev. We allow the Soviet presence during such interveiews in order to ensure our very important rights to similar access to Americans in the Soviet Union. However, the meeting was structured so that at no time were the Soviets present allowed to intimidate Seaman Medvid. At the meeting only one Soviet representative was allowed to speak, and then only at the start and end of the interview; he was not allowed to interrupt while the Department of State interviewer questioned Seaman Medvid or while Seaman Medvid responded. Not present during the interview but aboard the Coast Guard Cutter to assist if required were two additional Department of State representatives, including an Assistant Legal Adviser, and also a U.S. Air Force psychiatrist, and representatives from INS, the Border Patrol, and the U.S. Customs services. The interview was conducted through the U.S. interpreter in both Russian and English.

Shortly after the interview began, however, Seaman Medvid said he felt nauseous, and he asked to go outside for some fresh air. At that time, the sea was still rough as a result of Hurricane Juan and the Coast Guard vessel was rolling as a result of the turbulent waters. Seaman Medvid was escorted to

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the deck and attended to by the U.S. Navy medical doctor who recommended that he lie down in the ship's sick bay. The Soviet medical doctor was present as an observer but did not participate in his treatment. After approximately a half hour, Seaman Medvid indicated that he was prepared to resume the interview and the U.S. doctor concurred that there was no medical impediment to continuing the interview.

When the interview resumed, Seaman Medvid was repeatedly assured by the Department of State interviewer that he was not under arrest, that he was free to remain in the United States, that he was free to depart immediately with the U.S. representatives and that he would not have to return to his ship or to the USSR against his will. He was also questioned extensively about the events of the preceding days, particularly why he first jumped from the M.V. Konev and what had happened when he was returned to the ship. Seaman Medvid replied that he had fallen overboard while making some electrical repairs on the ship and that he could recall almost nothing from that time until he woke up in the sick bay of the Soviet ship. He repeatedly stated that he wanted to return to the Soviet Union. Nevetheless, because we wanted to be absolutely certain that Seaman Medvid understood that he had a clear choice, and considering his nausea earlier that evening, the Department of State in Washington decided that Seaman

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Medvid should be given an opportunity to get a good night's sleep on shore. A near-by U.S. Government military facility was selected for this purpose.

Seaman Medvid was given supper on the Coast Guard Cutter and at approximately 11:15 p.m. EST on October 28, he and the accompanying U.S. and Soviet representatives were transferred to a nearby Naval Support Facility, travelling first by launch and then by motor vehicle. At the naval facility, Seaman Medvid was given a thorough physical examination by the U.S. Navy medical doctor, which lasted approximately 45 minutes, and a psychological evaluation by a U.S. Air Force psychiatrist which lasted approximately one hour. The medical doctor determined at that time that Seaman Medvid did not appear to be under the influence of drugs. The Soviet doctor was allowed to observe but not participate in these examinations. We will be providing to the Committee, as privileged information and not for public release, copies of these medical reports.

Seaman Medvid was housed overnight in a comfortable suite in the Bachelor Officers Quarters (BOQ). No more than one Soviet representative was allowed in the living room area outside his bedroom and then only when an American was present. The other Soviet representatives were quartered in a separate room at the BOQ. Before going to sleep and again in the morning, Seaman Medvid relaxed by watching T.V.; he was especially interested in viewing T.V. coverage about himself. In conversations with the State Department representative

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that evening and again the next morning, Seaman Medvid kept up a steady stream of informal conversation, and he frequentlyopined that things in the USSR were better than in the United States. He also repeatedly expressed his desire to return to the U.S.S.R.

At approximately 1:00 a.m. CST on October 29, he went to his room where he slept until around 8:00 a.m. CST. After breakfast Seaman Medvid participated in an extended interview with a U.S. Air Force psychiatrist; the Soviet doctor was present only as an observer. Through extensive questioning, the psychiatrist determined that Seaman Medvid was alert, capable of doing calculations, and in touch with reality. He did not appear to be sedated or under the influence of drugs. At one point Seaman Medvid strongly objected to questions by the U.S. psychiatrist which he interpreted as implying that he might not be in control of his faculties. The U.S. psychiatrist determined that Seman Medvid was capable of making important decisions about his future. Following this examination, Seaman Medvid continued to watch T.V. and converse informally with the American and Soviet representatives present.

At approximately noon CST on October 29, the U.S. representatives reconvened the interview with Seaman Medvid. The U.S. interviewer questioned him extensively concerning his wishes and assured him he would not be subject to prosecution

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or forced to return to the custody of Soviet authorities against his will. If he chose, he could leave immediately with U.S. authorities. He was alert and was determined by U.S. medical, legal and other representatives to be competent to make a decision concerning whether he wanted to remain in the U.S. During the final interview, Seaman Medvid reaffirmed his repeated statements that he wished to return to the USSR; he specifically expressed his desire to return home to see his mother and father. On instruction, the U.S. representatives then adjourned the interview to seek advice from Washington.

At 3:45 p.m. EST on October 29 the White House, the Department of State, the Department of Justice and INS instructed the U.S. representatives to reconvene the interview and to tell Seaman Medvid that he would be allowed to return to the Soviet ship as he had repeatedly requested. Seaman Medvid was asked to sign a statement in Russian and English confirming his wishes and his understanding that he would be free to leave with U.S. representatives immediately if he chose to do so. After insisting on a few changes in Russian to the text of the statement, Seaman Medvid signed it. These were changes in the verb tenses and an additional sentence which repeated that he had decided to return to the USSR. Medvid said he wanted these changes to make it clear that he had never waivered in his determination to return to his country. The Department of State representative then accompanied Seaman Medvid and the Soviet representatives to the M.V. Konev in accordance with Seaman Medvid's wishes, where he was greeted with cheers by the Soviet crew.

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In conclusion, I would like to underscore the fact that at every point in the Department of State's involvement in this case, our paramount concern was the welfare of Seaman Medvid. We were determined to ensure that he had an opportunity freely to express his preferences. Over a period of days, extraordinary measures were taken to ensure that he was given that opportunity, first aboard the U.S. Coast Guard cutter and then again at the U.S. naval facility after he had had a good night's rest. We were obviously not able to recreate Seaman Medvid's original frame of mind of October 24, nor will any of us ever know what pressures may have been exerted on Seaman Medvid while he was on the Soviet ship prior to his transfer to our custody on October 28. Nor did we ever discount the fact that such pressures may have influenced Seaman Medvid's final decision. None of us is under illusions about the repressive nature of the Soviet Government and its willingness to use coercion and threats to control its people. From the outset there was always the possibility that Seaman Medvid might indicate that he wished to return to his ship and to the USSR and that if he did so, we would have to respect that choice and whatever considerations led to that decision.

In our questioning of Seaman Medvid he repeatedly expressed his desire to return to the USSR and there was no doubt on the part of U.S. medical doctors who examined him about his ability to make such a decision. All officials involved in the case,

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both in Washington and New Orleans, concurred that the U.S. should allow Seaman Medvid to return to the Soviet ship. It is of course possible for anyone to second guess whether we should have attempted to keep Seaman Medvid longer in circumstances calculated to try to overcome presumed Soviet pressures. That is a judgment call. I would only ask that consideration also be given to whether the United States wishes to detain a foreign citizen against his repeatedly expressed wishes, recognizing that only that citizen, in cases such as this, can truely weigh the risks taken for himself or for others.

I would be pleased to respond to your questions.

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Mr. LANTOS. Before we take questions, I wonder, Admiral Thompson or Mr. Grimes, do you have any opening comments to make, or are you basically satisfied that we move on to questions now?

STATEMENT OF REAR ADMIRAL DONALD C. THOMPSON, CHIEF OF STAFF U.S. COAST GUARD

Admiral THOMPSON. I have no prepared statement, Mr. Chairman.

Mr. LANTOS. Thank you.

STATEMENT OF J. ROBERT GRIMES, SOUTH CENTRAL REGIONAL COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. GRIMES. Mr. Chairman, I have no prepared statement. I will respond to questions.

SEAMAN MEDVID'S FRAME OF MIND

Mr. LANTOS. Before I open it up to questions, Secretary Ridgway, I want you to address the same issue that I raised with Mr. Nelson. You cannot unscramble an omelet; we all understand that.

You said, I believe, that you could not recreate his frame of mind which existed at the time he first jumped. That is absolutely correct.

The question which I think is pivotal in terms of the decision of the State Department, the White House, and other agencies involved, is: Do you personally truly feel that, given his experience this was the proper, calm, unrestrained, judicious atmosphere in which he could make a rational decision? His experience was a nightmare—twice American authorities cooperated with the Soviets in forceably dragging him back to his ship. That is the only experience he had with us. He then had one interview—in which your State Department interpreter tells us he was hyper, he was so emotional, they were afraid he was just going to flip.

Ms. RIDGWAY. Mr. Chairman, the doctors who were present had to make that call: Was he competent to make these decisions? Could he make them firmly, consciously, and voluntarily?

I have heard some reference here to 24 hours. There was no clock ticking in that sense. The judgment call that had to be made, the medical decision that had to be made, was governing. The medical authorities who were present, on the basis of their expertise determined that he was in a condition to make this decision. That was their view.

He persisted in saying he wished to return, so he was returned. How much time expired, there was—as I say, not a clock ticking. But, rather, the conclusion of the medical judgment and the medical review and the persistent and indeed emphatic responses of seaman Medvid that he wished to return.

Mr. LANTOS. Thank you.

Congressman Ackerman.

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Mr. ACKERMAN. Thank you very much, Mr. Chairman.

Commissioner Nelson, I was trying to listen carefully to what you had to say. Let me just say—I know that these sentiments are shared by a great many Americans, that the pride that you expressed in the way that this matter was handled is only matched by the shame that so many of us feel.

I think what you have done is that you have destroyed a human life and even more importantly than that, if there can be such a thing, you have destroyed the dream and the hope of so many millions of people on this planet that somehow that they can reach our shores and find a better life.

You have taken that hope away from them. I would just like to know if you can just tell me, if you can just speculate, strip everything aside, just man to man, why did he change his mind?

Mr. NELSON. Shall I respond now?

Mr. ACKERMAN. Please.

Mr. NELSON. I was not sure you were finished.

First, let me make some comments, Mr. Ackerman, on the issue of destroying a person's life or that we have done something here to take away the belief of people coming to this country.

I work closely with Chairman Mazzoli to your right in the Immigration Subcommittee. Let me give you just a couple of statistics that don't relate to this case but I think for you and me and every American that we ought to be very proud of this country and our immigration policies and our refugee policies.

I have acknowledged a mistake was made here by our people, a good faith mistake. They made a mistake. They should not have returned him without thoroughly checking.

I stand by my statements. I think Secretary Ridgway has endorsed that and the other gentlemen at this table that the U.S. Government after we learned of the unfortunate preliminary return to the vessel took extraordinary steps to remove him, including the necessary use of force if that was required. That certainly shows—what other nation would take those kinds of steps in this circumstance to protect an individual?

Let me finish.

Mr. ACKERMAN. You are closing the barn door after you have let the horse escape.

Mr. NELSON. Let me finish. Then the extensive examinations that were conducted were here. Three district courts of the United States have dealt with this question and a circuit court. I suggest you read the testimony.

I suggest you read the medical reports involved before you make those allegations.

Now, let me just make a couple of general statistics about this country. Since 1980, we have admitted 3 million permanent immigrants to this country. That is equal to the number for 25 years before, 1930–55. People processed through, returning citizens, immigrants, visitors, in 5 years, 1.4 billion people have come through our gates and that is one-fourth of the whole world's population.

Now, I would defy anything to say that there aren't just by the law of averages going to be a few mistakes in admitting people who

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should not come in or denying entry for some who don't. This is one of those unfortunate things. In terms of refugees, we admit over twice as many as the rest of the world combined. So don't give me the thought that we are a country without humanity, without every effort to let people in, including people defecting from the Soviet Union.

We admit people defecting from the Soviet Union. Now, you asked the question how can I read his mind? I think I commented on that as best I can to Chairman Lantos and that will conclude my comment.

Mr. ACKERMAN. I think that your "c'est la vie" approach, we have admitted so many millions of people before, has nothing to do with the instance that happens to be before us. Is this the same reasoning, Commissioner Nelson, that you apply to the Afghans that are in prison in New York, that have escaped from the terrible war that they are facing with the Soviet Union?

Mr. NELSON. I will be happy to discuss that with you, Congressman, if the committee wants to go into that issue as well as this one. I think you wrote a letter on that that was an outrageous letter, untrue, inaccurate, and unfortunate.

Mr. ACKERMAN. I think if you have characterized it as such, you may want to discuss it. I don't know that it is appropriate.

Mr. NELSON. I leave it to the chairman whether he wants to discuss that.

Mr. ACKERMAN. I think your treatment of certain individuals and certain people indicates a very, very selective approach to enforcing certain of the laws that apply. There seems to be a great concern with the closing and protecting of our borders which I fully subscribe to, and a selective approach to not enforcing the rules and regulations that apply to asylum. This is just common sense and dignity that your agency has neglected to enforce.

Mr. NELSON. I think the record will stand for itself as to the effective fair enforcement of all the immigration laws including the asylum laws. I will be pleased to discuss any of these other issues with you at any convenient time.

Mr. ACKERMAN. In fairness to the other members.

Mr. FEIGHAN. Mr. Zschau.

Mr. ZSCHAU. Thank you very much, Mr. Chairman.

We are in a race against time with you, Ms. Ridgway, having to leave for votes. But I do have a few questions, some brief questions, for you that perhaps could be answered quickly.

DECISION TO RETURN SEAMAN MEDVID TO THE "KONEV"

You mentioned that the decisions on this matter were made at the highest levels in the White House and the State Department. Could you state specifically who made those decisions?

Ms. RIDGWAY. Mr. Congressman, I just checked and if I could stay with the highest levels of the White House, the Department of Justice, and the Department of State, I would prefer to.

STATE DEPARTMENT QUESTIONING OF SEAMAN MEDVID

Mr. ZSCHAU. Let me go to another question. You mentioned that there was presumptive evidence that the sailor wanted to stay in

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the United States given the body language that he had been speaking with. In that statement of presumptive evidence, do you include also the information from the interpreter that he had specifically answered "yes" when asked whether or not he wanted asylum? Did you have that evidence at that time that he had in response to that question answered positively and without hesitation?

Ms. RIDGWAY. We were gathering all of that information as we went along and the reports were coming in from various areas, but I believe looking at the record, Mr. Congressman, we had all of that information available to us. Obviously, the most dramatic evidence was the jumping off the ship.

Mr. ZSCHAU. But there was no question that he had been asked whether or not he wanted asylum and your information was that he had indeed asked for asylum.

Ms. RIDGWAY. No; I can't say we had that. As I recall the record we had available to us at that time, the record showed that he had not answered in the negative and we were still trying to find out what that meant at that time.

We then posed our own questions of "do you wish to stay?" "Do you wish to return?" And it was in that context that the seaman's views were determined.

Mr. ZSCHAU. Is there a transcript of the entire interrogation that the State Department conducted with him after he had been brought back for the final time?

Ms. RIDGWAY. There is not an entire transcript. There are pieces, I am told, but there is not an entire transcript.

Mr. ZSCHAU. It was not tape recorded?

Ms. RIDGWAY. No, sir. Portions of it were, but not all of it.

Mr. ZSCHAU. From the information that you have about that interrogation, was he asked why he had jumped the two times?

Ms. RIDGWAY. Yes; he was. He was specifically asked why he had jumped and why he had jumped again.

Mr. ZSCHAU. What was his answer?

Ms. RIDGWAY. He said he didn't remember those things, that he fell off the ship.

Mr. ZSCHAU. Was he asked why he had originally asked for asylum in the earlier questioning, the original interrogation?

Ms. RIDGWAY. He was taken through all of the things: Why had you jumped, as we saw it at that time, why had you presented yourself, why did you come back again? In all of those he said he did not remember anything between falling off the ship and waking up in the sickbay.

Mr. ZSCHAU. Did the doctors seem to believe that explanation?

Ms. RIDGWAY. The doctors concluded that he was clear in what he was saying which was that he wished to be returned to his ship.

Mr. ZSCHAU. Was he asked why he had changed his mind from the original statement he had made to the interpreter over the telephone to this interrogation?

Ms. RIDGWAY. You asked a form of that question first, Mr. Congressman, as to whether we knew exactly what the conversation had been between him and the interpreter over the phone and at that time that was still being straightened out.

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As I gather it is still being straightened out. What they did go through is very precisely all of the questions trying to ask him why he did each of the things that we knew he had done.

RECOMMENDATIONS FOR FUTURE QUESTIONING OF POTENTIAL DEFECTORS

Mr. ZSCHAU. Would you recommend in the future that transcripts of interrogations or tape recordings of interrogations be made so that people could reference back to the original conversation.

Ms. RIDGWAY. We have been asking ourselves that, especially as people have wanted, as you do, to precisely satisfy themselves as to the question and I think it is one we would want to discuss with you as we all take this opportunity, as the Commissioner has said, to review the procedures.

There are arguments on the other side which is that if you are trying to establish this noncoercive, nonthreatening environment and people see notaries or see tape recorders, you could, in fact, set up the same reaction.

So I think we would want to discuss that with the people who are concerned about precisely what procedures are and make sure we find the right balance.

ATMOSPHERE DURING THE INTERROGATION

Mr. ZSCHAU. Was the captain of the ship present during your interrogation?

Ms. RIDGWAY. The captain of the Soviet ship was present.

Mr. ZSCHAU. He was present?

Ms. RIDGWAY. Yes; he was.

Mr. ZSCHAU. Is that part of the nonthreatening atmosphere you described?

Ms. RIDGWAY. We believe that we exercised enough control over those interviews with the participation of those people strictly limited and our running the interview the way we think it should be done that, in fact, that does not make the atmosphere threatening.

But, again, I would like, Congressman, to go to something we have touched on, I have touched on, the Commissioner has touched on, and that is with the presence of highly trained psychiatrists and medical people there with no clock ticking, as I pointed out, with a determination to be able to get to the judgment of did the young man wish to return, did he wish to stay in the United States and our assumption that he wanted to stay in the United States based on his behavior becomes a call for those who know human personality and the human psyche.

Mr. ZSCHAU. Well, it would seem to me that there was evidence of some pressure being put on the sailor, given the original statements that were made, the original actions that he had taken and then the statements that he made there under your final interrogation in the presence of the captain of the ship.

With your knowledge of the procedures of the Soviets and the way in which they treat people who try to take these kinds of actions, is there any doubt in your mind that he was not under some pressure from the Soviet captain or from his colleagues?

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Ms. RIDGWAY. I wouldn't say it was under the presence of the Soviet captain or we would not have been satisfied that we had, in fact, as you say, established the noncoercive or nonthreatening atmosphere.

I said in that part of my remarks that I chose to read into the record that we have no doubt that between the time he returned to the ship and the time we talked to him that there were pressures put on him.

I think that we all know the nature of the society from which he appeared, in the first instance, to be trying to flee, that that kind of pressure would be put on him. But the medical conclusions, the psychiatric conclusions were addressed specifically to the question was he competent at the time that we were questioning him freely, voluntarily, consciously stated decision.

We had thought his decision was to stay in the United States. We persisted because that was the belief with which we all went down to New Orleans to extract this man from the situation in which he found himself.

He emphatically repeated that he wished to return and that in line with the medical finding he was competent to make that decision. Officially, the language of the documents which we are prepared to make available to you for use in executive session, the phrase is as competent as a Soviet citizen with his background could be," he made the decision and we accepted it.

LINKAGE OF THE MEDVID SITUATION TO THE UPCOMING SUMMIT

Mr. ZSCHAU. Let's suppose that the highest levels in the White House or the State Department, a different key decision had been made, a decision to keep him for a while for more talking, that based on the presumptive evidence of his jumping off the ship and his earlier conversations, that maybe there was some doubt as to his later statements. What impact do you think that might have on the upcoming summit talks, or in general, United States-Soviet relations? Is that a factor? Could anything like that with one individual have any sort of major foreign policy impact?

Ms. RIDGWAY. Mr. Congressman, I think we would have found that consideration irrelevant. It was from the start and it was at the end. We went to New Orleans with the evidence before us of the young Soviet sailor who had jumped from his ship in an apparent desire to stay in the United States, an act that he repeated even later. At no time did considerations of United States-Soviet relations or forthcoming meetings in Geneva enter into the considerations.

Had we found at the end of our interview period that either the doctors could not make the decision they made, that is, of his competence, or that we did not have the necessary emphasis from him of his desire to return, he would have been held until we could have reached that conclusion.

But I would like to say as we have said from the outset, that at no time did either the bilateral relationship or the specific event forthcoming in Geneva have anything to do with how we proceeded.

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Mr. ZSCHAU. Mr. Nelson, I know the chairman is back. I have been given the privilege of asking these questions and I won't take anymore time.

If I may just ask one more question, Mr. Chairman.

Mr. LANTOS [presiding]. Yes.

INS UNDERSTANDING OF MRS. PADOCH'S INTERVIEW WITH MEDVID

Mr. ZSCHAU. Is there any disagreement, Mr. Nelson, between your understanding of the original conversation of sailor Medvid with Mrs. Padoch or is there a difference of opinion as to whether indeed he did ask for asylum in that first conversation?

Mr. NELSON. Yes. If I might add, Mr. Zschau, before answering that question, to the last response by Secretary Ridgway, regarding this summit question, I was present during the entire weekend up here in the command center. Never once was there any reference to summit or any consideration.

I certainly would reaffirm that from the Justice Department's role and that certainly includes the National Security Council discussions and it would hardly make sense that we would have backed off because of the summit when we went to the steps that we did and the demands on the Soviets to release him to our custody and then the subsequent transfer to the land for further interview.

So I would hope that that issue, that specialization, would be put to rest. Regarding your question, Mr. Zschau, on the initial situation, we have taken statements. I hope we can release some of those later.

They are still in the Justice Department review, but basically the situation—you have heard Mrs. Padoch. I didn't hear her full testimony, but I have heard it before and her statements where she, of course, maintained there was a clear statement by Mr. Medvid to her which she passed on that, yes, he did ask for asylum. Our officers have indicated in their statements they didn't understand it that way. Obviously they called her. It is also interesting there might be some language questions because the understanding is Mr. Medvid's language primarily is Russian. She indicated herself there is some question of that. That is another issue that might be looked at.

The point is our officers called her, had the discussions, apparently the line was not too clear. It was late at night and the conversation apparently went on for some time. Their answer is when they asked her to ask the question, does he claim asylum, is that the answers they got back and their understanding were "no." Now, as I have said, though, I don't think there is any reason for any of us to get into whether Mrs. Padoch is right or our people are right, because irrespective of that there was a difference.

They did not interpret it as asking for asylum and they returned him. Had they done so and understood Mrs. Padoch, I am sure they would have retained him but they understood to the contrary.

As we have pointed out, though, so we don't make that into a debate, there were enough signals based on the conversations that they should have recognized a potential asylum claim and particu-

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larly under the guidelines for a Soviet person they should have retained him and pursued it.

Mr. ZSCHAU. Mr. Nelson, this is very important.

Mrs. Padoch testified very clearly that she asked each time the questions were asked whether the sailor understood the question, and she said "yes, he did." Then she testified that she asked whether the Immigration officials understood the answer and they said "yes." It seems to me that there was a misunderstanding is impossible under those circumstances.

Mr. NELSON. I can only recount that from the information I have read, of course, I was not present. There was apparently quite a lengthy conversation between Mrs. Padoch and Mr. Medvid and there might have been some difficulty in their minds of getting to specific questions asked but on the question you asked it was their interpretation that when the question, did he ask for asylum, the answer they understood was "no." There was just a direct conflict in that.

Mr. LANTOS. Would the gentleman yield on this?

Mr. ZSCHAU. I will be happy to.

Mr. LANTOS. Mr. Nelson, we are really at a core issue here. Dr. Padoch is working for your organization on an occasional basis as a qualified Ukrainian interpreter. I have never met her prior to this morning.

She looks like a person of intelligence, education, knowledge, and judgment whom your organization hired. I think it ill-behooves you at this stage to cast doubts on either her competence or her veracity. She says—if you will allow me to finish—she states that she talked to him in Ukrainian. He understands and speaks Ukrainian fluently and of the 45-minute interview there was only one relevant question: Does he wish to stay in the United States and he said "yes."

Question repeated: Does he wish to stay in the United States and the answer is "yes." Well, how on God's green earth could this be subject to misinterpretation?

Mr. NELSON. Mr. Chairman, I at no time in the past, present, or the future, have in any way questioned Mrs. Padoch's veracity or competence and I hope there was no indication of that in any way. I have tried to make that very clear. I cannot respond beyond what I have done. Our agents—had this telephone conversation.

They obviously sought her out. She does work for INS on a contract basis. They sought her out, tracked her down way up in New York so they were trying to get some information.

I don't think there is any basis to question their good faith or their integrity or their veracity. It is quite clear there was an honest misinterpretation.

I agree with you that was a poor judgment on their part. It was a poor interpretation. In any event, there were enough signals given as to questions of political feeling or moral feeling or this is a good country that they should have, of course, said, my God, this is a likely asylum claim and should have pursued it. Therefore, Mr. Chairman, I don't really think there is any purpose in debating whether Mrs. Padoch was right or they are right.

There was an honest misunderstanding. It should not have happened, but I think that is one of the things that occurred and,

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again, we recognize those procedures weren't followed appropriately.

SENATE CONSIDERATION OF A SUBPOENA FOR MR. MEDVID

Mr. LANTOS. Secretary Ridgway, if I may ask a question that I think is in your domain. The Senate is considering a subpoena of Mr. Medvid today. What would be the State Department's position in the event there is an affirmative vote by the Senate of the United States today?

Ms. RIDGWAY. May I ask, Mr. Chairman——

Mr. LANTOS. Would you approve or oppose such a subpoena?

The Senate of the United States is today considering such an action. The State Department no doubt has a view of the appropriateness or the desirability. What is that view?

Ms. RIDGWAY. Our view is that it would be both unnecessary and ill-advised but——

Mr. LANTOS. Why would it be unnecessary and why would it be ill-advised? It seems to be the growing consensus of the Congress that Mr. Medvid has not yet been given a decent second chance and it seems that only via a subpoena is he going to get that second chance.

Ms. RIDGWAY. Mr. Chairman, we stated on October 29, and I would state today that we are satisfied that seaman Medvid was competent to make his decision to return to the Soviet Union. We believe he reached that decision as an official, and conscious and voluntary decision.

We believe the matter is closed.

Mr. LANTOS. Secretary Ridgway, with all due respect to you, it is obvious that the matter is not closed. If the matter were closed, the Senate would not be meeting this afternoon to consider a subpoena. If the matter were closed, this committee would not be dealing with this issue. So let me say to you, not for the first time, that the State Department is out of synch with the American Congress and the American people.

The issue is not closed. You don't have—the Department doesn't have—a unilateral authority to declare a major public issue closed. You would like to see it closed, but it is not closed. So with that as a preliminary, I just want to pursue this matter of how rational the decision was in that context.

SEAMAN MEDVID'S INTENTION TO DEFECT

Is it your private view or your public view that initially he intended to defect?

Ms. RIDGWAY. Mr. Chairman, let me share with you the whole of my private view, which expressed in this forum, obviously becomes a public view.

Mr. LANTOS. Yes.

Ms. RIDGWAY. I have no doubt in my mind that seaman Medvid left his ship—jumped from his ship seeking freedom.

I have no doubt in my mind that the people who went to New Orleans to talk with him presumed that that was his intention. I have no doubt in my mind, and this question came up while Mr. Zschau was doing the questioning—that he was subject to pressure

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in the interim between his having been returned to the ship and his having been talked with and looked at by the team of U.S. officials who were there.

I have no doubt that he, himself, faced an extremely difficult personal decision. I have no doubt in reading the record that the medical authorities who were present found him able to confront that difficult personal decision so he decided to return to his ship. And I have no doubt that that was not an easy decision for him, but I have no doubt that his emphasis in repeating it was genuine.

Mr. LANTOS. Can I just stop you there for a moment, because I was in full agreement with you until your last point. Do you really believe this is fundamentally a medical issue? I mean, I find it mind-boggling that you, as our former ambassador to East Germany, whose expertise in Eastern Europe we all highly value, would view this as a medical decision.

The initial decision of this individual was not a medical decision. It was a political cry for freedom. His only experience with our authorities was that they threatened to arrest him; that they twice took him back to the ship kicking and screaming against his own wishes. They had to get six Russian sailors to subdue him and carry him up the gang plank.

Then he is alone with them. They threaten his parents. Our interpreter says that all he kept saying was how he wanted to see his Mama and his Papa. Well, he did because they told him he will never see them again. He is now interviewed after having attempted suicide, after having attempted to slash his wrists, with his captain looking at him. And we are saying that this is a nonthreatening environment in which he is making a rational decision?

I mean you really can't believe that, can you?

Ms. RIDGWAY. Mr. Chairman, I am not suggesting that this was a medical decision. I was saying that those people who were present who have the expertise and training in this field found him competent to make the decision. What he was saying was, the decision he made was to return to his vessel despite all of our presumptions that his previous actions indicated that he wished to be in the United States, he was saying that he wished to return to his vessel.

The question that I would leave is whether we were then to override his judgment that he did not wish to jeopardize whatever it was that he valued and loved in his home country.

Mr. LANTOS. Well——

Ms. RIDGWAY. Whatever that was. He made decisions. He sorted them out, the only medical—I don't wish to lean on this so that I seem to be evading this—the only medical feature was, was he in the position mentally and physically to do that sorting out and weigh the risks? As I said at the end of my prepared remarks, was he able to weigh the risks between what he wanted to do and what mattered to him in his own country?

Mr. LANTOS. Ms. Oakar.

ABSENCE OF BLOOD TEST OR URINALYSIS

Ms. OAKAR. Mr. Chairman, I really appreciate your courtesy to me, and I compliment you highly on this hearing, and I want to thank you personally for having the hearing.

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Ms. Ridgway, we in Cleveland have a lot of respect for you. We remember when you came to Cleveland to discuss the Helsinki accords in the late 1970's. The fact is, though, that no screening tests were done on this sailor; is that not true?

Ms. RIDGWAY. I am sorry.

Ms. OAKAR. No medical screening tests for blood, for urinalysis, presence of drugs? When you say the doctors examined him, they really didn't do a complete examination; isn't that a fact?

Ms. RIDGWAY. They did as complete as they thought necessary. They had full authority to do——

Ms. OAKAR. They had, but——

Ms. RIDGWAY. They had full authority to do any urinalysis or blood tests or anything else required.

Ms. OAKAR. Did they do those tests?

Ms. RIDGWAY. They did not.

CONFIRMATION OF SEAMAN MEDVID'S IDENTITY

Ms. OAKAR. They did not do those tests.

This may seem like a bizarre question, Mr. Chairman, but I wonder how do you know who was being interviewed. You had two different sets of Americans with him on different occasions, and so on. Are you sure that Medvid 1 was Medvid 2? Do you follow my questioning? Are you sure this was the same sailor?

Was he the same sailor who wanted to go back and see his mother and father as the chairman said, et cetera, et cetera? How do you know if you didn't do that screening?

Ms. RIDGWAY. I said in my remarks, as I think we all have to say, that not one of us can recreate what was in seman Medvid's mind on October 24, and when——

Ms. OAKAR. I am not talking about his mind. I am saying personally. Are you sure it was the same sailor?

Ms. RIDGWAY. Oh, yes, yes.

Ms. OAKAR. Who wanted to go back, and I don't even mean in terms of whether or not he was drugged or acting with his full faculties. That is a different issue. That is why I thought screening was important, and none of that was done. But in terms of the human being, are you sure that the same person who tried to defect was the same person who relished going back to the Soviet Union?

Ms. RIDGWAY. Thank you. I misunderstood your first question.

The Department of State representative who interviewed Medvid compared the picture and the description in Medvid's passport with the individual before him and satisfied himself that the person in question really was Medvid.

Ms. OAKAR. Was he the same person who questioned him both times—three times, I mean.

Ms. RIDGWAY. If I might, Ms. Oakar, the Department of State representative had with him a photograph of Medvid—four sorts of evidences, if I might put them all before you. He had with him a photograph of Medvid which was taken by the INS agent who had interviewed him before returning him to the Soviet ship, and the Department of State representative satisfied himself and the others

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that the man in front of him was the same one who was in the photograph taken by INS.

Then also participating in the first meeting which the Department of State representative had with Medvid was an INS officer who had observed Medvid on the Soviet ship the previous day in the company of one of the INS officers who originally interviewed Medvid on shore. The former—that is, the INS officer who observed him the previous day—confirmed that Medvid and the individual at the meeting were one and the same man.

Also, the INS officer identified Medvid at the meeting through a birth mark on the heel which he had earlier observed on Medvid while he was on the Soviet ship. So there were those four elements of the identification.

REQUEST FOR SEAMAN MEDVID TO MEET WITH HIS RELATIVES LIVING IN THE UNITED STATES

Ms. OAKAR. Mr. Chairman, I think your point about the fact that obviously this young man, if it was the same young man, was totally intimidated the second and third time around, is really well-chosen. I wonder why people who are related, some of whom are from the Greater Cleveland area, to this sailor, why there isn't some negotiations on their behalf. This would seem reasonable to me; that these relatives could meet with this young man.

Apparently he is still in the United States. Is there any consideration being given so these people don't have to go to court; that they could meet with this young man? Obviously, he had no support system whatsoever after he attempted, as you said, to gain freedom. We didn't give him the support system. He didn't have an attorney. He didn't have anybody.

He was just alone with the intimidating crowd of Soviets right there. Can't you reconsider and allow these relatives to have an opportunity to speak with this young man? Wouldn't that be the fairer thing to do and request that of the Soviet authorities, and if they say, no, I think that there is a way that you can allow this meeting to take place. Don't you think in fairness you ought to do that?

Ms. RIDGWAY. Ms. Oakar, I think that this young man has said he wants to return. He is on that vessel. I think that the difficulty in reaching him is one that I understand, and I recall very well my days in Cleveland meeting with many of your constituents.

I know the sense of community that exists and they have always been a part of my community as I have worked with them on some of these Helsinki issues. I think we have just come to a difference on this one as to whether this young man wishes to go home. And I say, we consider that it has been well-handled and the case is closed.

Ms. OAKAR. Mr. Chairman, if I might request this of the Chair then—and I would be happy to join the Chair in this—of having a formal request, very simple request, maybe not to even reopen the whole thing, but to allow this man to have a contact with some of his loved ones in the United States, and I think you can do that—I don't think that is any big deal—and see where the chips fall about this young man.

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SEAMAN MEDVID'S DECISION TO RETURN TO THE "KONEV"

Mr. LANTOS. My distinguished colleague's point is, I think, very well taken.

When we first spoke with the State Department, Madam Secretary, the point of the nonthreatening environment kept coming up. The nonthreatening environment was described as a group of officials of our Government, the Soviet representatives both from the embassy and his own captain, a group of military people standing outside, the hurricane still functioning, and he was so nauseated that he got sick. He slashed his wrists. He was, according to the State Department statement—I am quoting them—emotional, hyper, disturbed, worried, and concerned. When he was on shore, he was banging his head against the rocks to kill himself.

How, in the face of this overwhelming and palpable evidence, that a child of 10 with an IQ of 60 could see—can we keep claiming that this man made up his own mind to return to his ship.

Your State Department interpreter told us that when he was asked all of the questions about what happened throughout the whole period, he claimed amnesia; he didn't remember anything. He didn't remember he jumped off the ship. He didn't remember they dragged him back. He didn't remember he jumped again. He didn't remember they dragged him back.

Does anybody believe this? I can't believe that any of you ladies and gentlemen sitting there believe it. I don't believe it. Ms. Oakar doesn't believe it. The Senate doesn't believe it.

Congressman Pease.

Mr. PEASE. And I don't believe it.

[Applause.]

Mr. LANTOS. I am sorry, we cannot allow any expressions of sentiment in the committee room; otherwise, we will have to have the room cleared.

Thank you.

ADMINISTRATION RECONSIDERATION OF THE MEDVID CASE

Mr. PEASE. Thank you, Mr. Chairman. I appreciate your willingness to allow some of us who are not officially members of this subcommittee—but, in my case, an alumnus of the subcommittee—to return.

I would like to pursue the line of questioning raised by my colleague, Ms. Oakar from northern Ohio. There is a longstanding tradition in this country, in baseball and lots of other sports, of the best two out of three series or the best four out of seven series.

It seems to me in this situation very clearly on one occasion the Immigration and Naturalization Service goofed up. This young man clearly said he wanted to stay, and he was not allowed to stay.

On the second occasion, under some rather bizarre and strange circumstances, as the chairman has just indicated, he signed a statement saying he wanted to go back.

The State Department and the rest of the governmental officials have now ruled the case closed, which may be a fine, neat way to do it from a governmental bureaucratic point of view, but this is not an ordinary case. This case has been on television. It has cap-

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tured the attention of the American people. There have been hearings in the Senate, and now in the House of Representatives.

There was a letter sent to the President the other day by 41 Senators. A letter was delivered this morning to the President by over 70 Members of the House asking for reconsideration of the case.

It just seems to me that even the Soviets would have an interest in cooperating with our State Department in trying to resolve this matter once and for all in a fair way so that reasonable people are satisfied that this young man either does or does not want to go back to his home.

One of my constituents, Mrs. Mary Filipouik is convinced that she may be a relative of this young man, a cousin. She has a sister and mother who also, of course, would be relatives of this young man.

As Ms. Oakar just pointed out, the knowledge on the part of the young man that he has—he may have—family here, if that is established, that he would have a support system if he decided to stay, could materially influence his decision.

I think the American public and the Congress would feel a lot better about this whole situation if there were a third opportunity, if he were removed from the ship once again, taken to neutral territory, a nonthreatening situation—perhaps the Swiss Consulate; Switzerland has a consulate in New Orleans—where he would be free from the influence of the United States and the Soviet Union. Let him talk to Swiss officials and make up his mind what he wants to do.

But the evidence of coercion and possibilities of having been drugged are just too great, it seems to me, for us to accept at face value the statement that he signed on the second occasion, in view of the very clear statements he made the first time he was interviewed.

So I would just ask our State Department representative: Where do we go from here? Is it not possible for the State Department to reopen this case and ask the Soviets to voluntarily make this young man again available in a nonthreatening, neutral setting, so that he can clearly indicate his preference?

Mr. LANTOS. I want to thank my colleague.

I know Secretary Ridgway will have to leave in just a couple minutes. May I make this suggestion. Both of my colleagues on this side of the aisle have a quick question that they would like to ask—if you could hold your answer—and then answer both questions at the end. We would like to ask you to leave someone behind from the Department who would be able to speak for the Department in your absence.

Congressman Smith of New Jersey.

Mr. SMITH of New Jersey. Thank you, Mr. Chairman.

Secretary Ridgway, during the various interviews, did Mr. Medvid indicate at all, by either what he said or expressions, that he was under duress, that he was being coerced? And did our State Department—my understanding is we did not—but did the State Department and INS persons on the scene indicate what might happen to him if he were to go back to the U.S.S.R., given the fact that we have so many precedents in the past where defectors were returned?

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One final question—and I do have several—Mr. Kudirka earlier testified that each ship carries a manual with explicit instructions to the captain as to how they should deal with a would-be defector, punitive actions that could be taken, various kinds of coercion that could be used.

Are we aware of this manual? Do we have a copy in our possession? And what are we doing to protest that kind of thing?

Mr. LANTOS. Congressman Ritter, would you like to ask your question, and we will give the Secretary a chance to respond?

Mr. RITTER. Thank you, Mr. Chairman.

Madam Secretary, you mentioned the timeframe of some 24 hours that the State had this man was a judgment call. I have got to conclude from everything I have heard, and just what I listened to here today, that that was bad judgment.

MEDVID'S DECISION TO RETURN TO THE KONEV

I have this chronology here, and I would like to turn to page 2 on the chronology.[1] At 10:30 p.m., a U.S. team of six officials assembled on the MV *Konev*, including Department of State, INS, U.S. Navy physicians.

Saturday, October 26, 3 p.m., U.S. officials view Medvid for the first time since Friday afternoon.

I have a question as to what happened between 10:30 p.m. Friday and 3 p.m. on Saturday?

Also, I have a question about Mr. Medvid's appearances and about the transcript, which I understand doesn't exist. Mr. Medvid appeared to have his wrists slashed, as I understand it. He also appeared drugged and groggy and nauseous. These are comments from State Department officials.[2]

Mr. Medvid was asked why he jumped off the ship, by State Department officials. His response was, "I don't remember jumping off the ship."

Now, you know, this relates to the 24-hour period. It just seems inconceivable that, given all that——

Mr. LANTOS. Let's give the Secretary a chance to respond. And we very much appreciate your taking the time.

Ms. RIDGWAY. Mr. Chairman, if I may surround my remarks and my answers to these questions with just something general, and that is that this is not the kind of a question that finds us divided either as bureaucrats and representatives of the American people, or as those Americans and other Americans. I think we all feel deeply the position that our country holds in the world today, and those people who went to New Orleans went with the presumption that this man was seeking freedom. They are people who were determined to give this man, in accordance with the procedures, every opportunity to stay in the United States.

And his decision to stay, which then required implementing, was as deeply agonizing, I know, for them, whether it is the Coast Guard or the INS or the State Department. All of those who were involved felt deeply and keenly that they were not only representa-

[1] See appendix 1.
[2] See appendix 2.

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tives of the United States, but that as human beings they were involved in a deeply human situation.

I think sometimes the record fails to show that——

U.S. INTERROGATION OF SEAMAN MEDVID

Mr. RITTER. If I could interject one question.

Was there any deal between the State Department and the Soviet officials on a time limitation?

Ms. RIDGWAY. Absolutely not. I think I have made that clear both with all of the questions that have this touch to them——

Mr. RITTER. How much time was Mr. Medvid alone, without the ship's captain, with Americans? Wasn't there an attempt to provide a Ukrainian translator? This man was from western Ukraine, right near the Polish border. His mother was Polish. In the streets, they don't speak Russian. This man was not a Russian speaker, and——

Ms. RIDGWAY. Mr. Ritter, I must– I would stay on. I trust—my luncheon host will understand.

This gentleman spoke Ukrainian and Russian, and our interpreter spoke both. It was the judgment of our interpreter that his first language was Russian, not Ukrainian. And in the statement that he signed, which was in Russian, he made several changes in the language text. He made them in Russian, and he made them in the conditional and subjunctive modes, and he made them grammatically correctly, so his ability to communicate with the people around him should not be in doubt. The written and spoken record should show that.

Concerning his being alone with the State Department or an American at any time, the answer is only when we were on shore and he was alone sleeping for the evening, and there were people outside his room, or present outside his room.

Earlier in the testimony today, Commissioner Nelson pointed out the importance to the United States of maintaining a principle of reciprocity in this field. All around the world, when American citizens are in difficulty, American consul demand, as a matter of international law the right to be present when they are questioned by foreign authorities; the right to have available to them a proper representation from an American official.

This is the reciprocal of that. It may be difficult to understand in this circumstance, but it is a principle we must cling to in order to protect our own citizens.

Mr. RITTER. But with slashed wrists, being groggy, nauseous and after spending more than 24 hours alone with Soviet authorities—and it looks like it may have been more than 24 hours—there seems to be an important lapse between Friday night and Saturday afternoon. Perhaps this was a time where that judgment call needed some modification.

You seem to have worked from a hard and fast rule which, given what this man had been through, from all appearances, may not have been applicable.

Mr. LANTOS. I think we will have to let the Secretary leave. I will not entertain more questions.

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Secretary Ridgway, I would like to ask you to designate somebody on your staff to take your place. And I will turn to Congressman Mazzoli.

Congressman Mazzoli.

CONDUCT OF THE INS

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

I appreciate again the indulgence of the Chair in including me in the hearing. I would like to talk with Mr. Nelson, the Commissioner of the Immigration Service, on a couple of areas.

Mr. Nelson, let me just say in candor, I am very much disappointed in the conduct of the Immigration Service. It would seem to me that in a case that would be this clear-cut, with this much of what someone called "body language," screaming, hollering, beating one's head against rocks, jumping into the river—a river which is dangerous, according to local inhabitants, to swim in—you know, that sort of a thing is pretty clear evidence that this individual did not want to stay on that ship.

Whether this individual wanted to stay because he liked the bright lights of New Orleans, the French Quarter, liked the girls, or was inhibited in his home and therefore wanted freedom, whatever reason, that seemed to be clear-cut evidence of what an individual does do "in extremis."

Despite that clear evidence, the Immigration people—and despite the clear rules of immediate action cases—they did exactly the wrong thing.

Let me ask you—first, I would say I am very sad to hear that, because I have worked with you for 5 years now, and with the INS, in trying to improve it, improving the men and women, giving them additional resources and money, working to improve the morale of the corps, only to see this kind of thing happen, which opens it up to further criticism. So I look at this with a great depth of sadness.

Let me just ask you this: The chronology seems to indicate that you didn't yourself hear about the case for well over 24 hours. Is that your recollection?

Mr. NELSON. No, Mr. Mazzoli. I heard about it about 3 o'clock in the afternoon, on Friday. This event occurred between 10 and 12 on Thursday night. So it was roughly 12 to 15 hours.

I would like to comment on your earlier point, if you wish.

Mr. MAZZOLI. Because the chairman is very indulgent, I would like to move on. I appreciate you would feel very much the contrary.

You have mentioned in earlier statements that you feel, in fact, proud of what the Service personnel did.

Mr. NELSON. Let me make it clear, Mr. Mazzoli, there are——

Mr. LANTOS. Please move the mike closer, Mr. Commissioner.

Mr. NELSON. As the Ambassador and Secretary Ridgway indicated, we believe the U.S. officials, including INS, handled this well after we determined—learned of it—and determined to remove him. And the early part——

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Mr. MAZZOLI. I think the fact is, Mr. Nelson, if you will permit me, that once the early part is over, the last part doesn't make any difference. It is just that simple.

Mr. NELSON. Let me clear the record, Mr. Mazzoli, on one matter, because we have—certainly, my testimony is very clear. I am saddened and disappointed our people mishandled this case. They did not use good judgment and did not follow instructions. That is a given. We can't change that. That happened. That was wrong. And appropriate action will be taken.

Mr. MAZZOLI. I do hope we can change it.

Mr. NELSON. Well, all right——

Mr. MAZZOLI. But we can't alter this case.

Mr. NELSON. Right. Right. But we will deal with that. But, I mean, that has happened, and it is unfortunate.

I think, again, let the record be cleared up in one area. There was a lot of talk about him being hauled kicking and screaming and banging his head on the rocks. We did not have any participation in that. Our people, after they made the erroneous determination that there was clearly no asylum claim, erroneous determination of that, they turned him over, as is the standard procedure for ship jumpers.

Remember, New Orleans is a major port. We have several hundred ship jumpers a year. They interpreted this as a standard ship jumper. They turned him over to the shipping agents.

We had no contact or involvement with him again until after he was removed from the vessel. So this transporting to the vessel, the jumping overboard there, the subduing by the other officials, was not by any Government officials nor by the INS.

WAS THE BORDER PATROL THE PROPER AGENCY TO HANDLE THE SITUATION?

Mr. MAZZOLI. Could I ask you, Mr. Nelson, I understand that you sent Mr. Brandemuehl, head of the Border Patrol, to New Orleans as your emissary to look in. Why was not someone from examinations or adjudications, the branch that deals with questions of asylum, sent?

Mr. NELSON. Mr. O'Connor, the regional commissioner was also there. He had line responsibility over all aspects of it. We had staff from the——

Mr. MAZZOLI. Why not someone who specifically is trained, and that is their sole job, to hear these matters of asylum?

Mr. NELSON. We determined with Mr. O'Connor, who had full line authority with everybody available he needed, and Mr. Brandemuehl, since this was a Border Patrol incident, both to investigate what happened and to participate, that he was the right official for the job.

Mr. MAZZOLI. Let me rephrase it, then, because obviously you have to look at this thing. Would you do it again? Would you send Brandemuehl tomorrow?

Mr. NELSON. Yes, because Mr. Brandemuehl, as you know well, is an honest, intelligent and able person. If I could add a point to what Ambassador Ridgway said, I talked personally to Mr. Brandemuehl who sat through all the interviews; that there is no question

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that the state of mind that he had personally—and you know his honesty and integrity—when he went down, it was a belief that this man, Medvid, was seeking—probably seeking asylum. That was the state of mind with which they went into it.

Mr. MAZZOLI. Again, to get into the record, Mr. Nelson, if a situation—if we got a call that said there was another Soviet fellow who jumped off this same ship and he was along the pier there, you would again send Mr. Brandemuehl down to handle this situation.

Mr. NELSON. Yes; absolutely.

Mr. MAZZOLI. Well, I thank you. I think it ought to be someone from another department, and I would hope when and if you reexamine the rules—and I think you should—because anything like this would cause reasonable people to suspect that they could be improved, they could be better specified.

I would think when there is any evidence to a reasonable person—and I think there clearly was here—Russian ship, a man speaking in a strange language. He looks at least terrified or scared or upset or hyperactive—those would be signals enough to seem that it would be one of those cases dealing with political asylum in which case a Border Patrol person is not the one who has the clear training to handle the case with the nuances and subtilties of these kinds of cases.

I would again hope, and respectfully submit that I don't think the Border Patrol person was the proper person to go down there.

Mr. NELSON. I have indicated, Mr. Mazzoli, in my testimony exactly what you recounted at the beginning, that all of the indicators should have indicated to hold this man for further review. There is no question about it.

Mr. MAZZOLI. Incidentally, if the chairman will allow me——

WERE PROPER INS PROCEDURES ADHERED TO?

Mr. NELSON. I might add I did not say they were perfect. I said we believe, and would ask the committee to look at the procedures; that they are fundamentally sound, because I wanted to make it clear we are not saying, oh, the procedures weren't good. Nothing wrong happened.

We think the procedures were fundamentally sound and if followed would have avoided this incident. We think the judgment was important and if proper judgment was used, it would have avoided it. What I am saying is they are fundamentally sound, but I agree and would very much appreciate your committee's involvement or anybody else's, to help us if there are changes that will make these guidelines better.

Mr. MAZZOLI. Part of it is just an emphasis from above that these rules are to be adhered to. I read them briefly, and it does appear that the immediate action cases are pretty well laid out. Obviously. the agents didn't care, like where they——

Mr. NELSON. Oh, no, no, not that they didn't care. They didn't follow the rules.

Mr. MAZZOLI. Let me say they overlooked them, ignored them, didn't follow them as zealously as they should. Were they people toward the end of their tour of duty? Were they ready to get out of their tour?

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Mr. NELSON. That is a good question. I don't know the answer to that. I have asked our people to look at that. It was late. I am not sure what their tour was.

Mr. MAZZOLI. Do you think they were anxious to get it out of their hair because they wanted to go home? Is that possible?

Mr. NELSON. I don't know that. We will have to find that out. We have a very thorough investigation ongoing, but I don't know the answer now. If we were really interested an hour earlier, in just brushing this off, they would not have made efforts to contact an interpreter in New York, so I don't think we can say they were callously indifferent.

MEDVID'S POSSIBLE MISINTERPRETATION OF "ASYLUM"

Mr. MAZZOLI. I guess my last question is this; it deals with what reaction I would have when I hear the term, "asylum." I wish we could in the second go-round talk to the interpreter of what the Ukrainian word is for asylum; what the Russian word for it is. and what the Polish word is. Asylum could be like Esparanto. It could be a universal word. I don't know, but the fact is that when you hear, "asylum," there are people who find that they are thinking of "asylum, bedlam, straight jackets and chains and dungeon" type things.

It is possible that this kid misunderstood what really asylum was. I believe the interpreter, Ms. Padoch, said earlier that in her understanding this young man wanted to stay in this country, and that it might have been a fear of this word that could—is there some way that your rules could be redefined so that the term asylum is not used, but understood synonyms are used for "asylum."

WHY WAS MEDVID HANDCUFFED BY U.S. OFFICIALS?

Second, tell me why does a man have to be handcuffed? Why handcuff this kid? Why would that ever have to be done? Handcuffs applied by the INS were used to handcuff this kid.

Mr. NELSON. I am not sure about the handcuffing. I am not aware he was handcuffed in our initial presence at all.

Mr. MAZZOLI. He was handcuffed on the way back to the boat, and I understood INS people were there.

Mr. NELSON. That is not correct. On the way back to the boat, no.

Mr. MAZZOLI. The committee staff indicated that, but we will clarify that. But the understanding we have is that INS people saw this man subdued, handcuffed and brought back to the ship.

Mr. NELSON. That is not my understanding. We believe the facts are contrary. But let me respond to the one point you addressed that is the meaning of the word, "asylum," and how that should be communicated.

I think that is a very valid question, Mr. Mazzoli, and that is one of the things your committee and INS and others should look at because it is clearly possible there might be some misinterpretations. We, ourselves, use the word for mental institutions and so forth also. So that is a valid point. I think we should pursue it.

Mr. MAZZOLI. Thank you.

Mr. LANTOS. Thank you very much.

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Congressman Feighan.

Mr. FEIGHAN. Mr. Hergen, could you identify your position?

STATEMENT OF JAMES HERGEN, ASSISTANT LEGAL ADVISER FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. HERGEN. Yes; I am Jim Hergen, H-e-r-g-e-n, Assistant Legal Advisor for Consular Affairs. I have been involved with the Medvid case since Friday night (October 25) approximately 3 p.m., when we first started the incident.

WAS MEDVID ASKED IF HE HAD RELATIVES IN THE UNITED STATES?

Mr. FEIGHAN. While I was voting, apparently some of my colleagues pressed the Secretary who testified before you, for some responses as to why this case is closed and why it cannot be reopened.

I don't know what her response was to that. I would like to underscore the comments of my colleagues that I think it is outrageous that the Department is taking that hard line given the extreme concern expressed by Members of the House and the Senate and that has been expressed by the American public generally.

I don't know what it is, if there is anything the Department is attempting to hide that prevents them from being willing to reopen the case for a thorough investigation and action. I would like to ask you if during the 24 hours in which Mr. Medvid was held by representatives of your Department, he was asked whether or not he had relatives in this country?

Mr. HERGEN. He answered that question as, "I don't know."

Mr. FEIGHAN. Would it be common procedure to inquire of someone who you think may be attempting to defect if that person has relatives in this country?

Mr. HERGEN. Mr. Feighan, could I make a general comment?

Mr. FEIGHAN. Please do.

Mr. HERGEN. It occurs to me as I listened to the hearings today and having been involved in this personally since the beginning actually, how concerned we all are, and particularly myself as an attorney, how concerned we all were with the question of voluntariness. You, of course, are aware that this Congress was concerned equally with the situation involving Mrs. Vlasova, the ballerina, back in the late 1970's and around that time the—also because of seaman Kudirka and the unfortunate tragedy that occured in that case.

It was because of cases like that that the Congress substantially changed section 215 of the INA and delegated in effect to the executive branch the extremely difficult task of considering cases of defection and asylum and, of course, the executive branch implemented extensive regulations in 8 CFR and 22 CFR, INS and State Department regulations, for use whenever there is a question of voluntariness, to detail an individual to make this decision on voluntariness.

What happened here, of course, is that the executive did precisely what it was asked or directed to do by the Congress. The executive took the responsibility to make a decision regarding the voluntariness of seaman Medvid's decision.

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Now, it appears to me the Congress is saying, "Well, we want to go behind your judgment and review your own independent judgment that we have given you the responsibility for exercising."

Mr. FEIGHAN. That is correct.

Mr. HERGEN. I understand the thrust of your remarks, yes. But given the number of asylees and defectors that we have all the time, I wonder if it is not a little bit unfair to inquire into our judgment or how far the committee wants to go or the Congress wants to go.

Mr. FEIGHAN. I think you will acknowledge, Mr. Hergen, on the issue of unvoluntariness, we are talking about dramatically different circumstances, from the initial time when Mr. Medvid came into New Orleans and the time when he was under the control of representatives of your Department, and the issue of voluntariness is dramatically different with each of those circumstances.

Mr. HERGEN. Yes, sir.

STATE DEPARTMENT CONTACT WITH IRENE PADOCH

Mr. FEIGHAN. That is why I asked whether or not he was asked if he had relatives in this country. I would ask you as well, did any of the representatives of your Department attempt during that 24-hour period to call Mrs. Padoch who would seem to be a logical person to inquire?

Mr. HERGEN. Yes, sir, I believe—if I can answer that question for the record, I believe that our interpreter who spoke Russian and Ukrainian, I am led to believe—I understand that he did understand what had happened with Mrs. Padoch to get a handle—or perhaps it was our psychiatrist, to get a handle on what the young man—what his condition was, to ascertain those facts, did make contact with Mrs. Padoch.

I believe that was her testimony the other day. But I would also like to add for the record that having been involved in this from the first, virtually the first instant we learned about this in Washington and having virtually not been home to my house in 2 weeks because of this matter, I want to emphasize that never for one instant, not for one instant, did we entertain or anybody that I came into contact with entertain the slightest doubt that if Medvid had given us the slightest indication that he wished to stay here, he would not have gone back.

In fact, and I think——

Mr. FEIGHAN. Mr. Hergen, I have to interrupt you, if you will excuse me, to tell you I find that absolutely an incomprehensible statement for you to say, given the circumstances of this case; given his twice effort to try and escape the ship; given the physical evidence of attempted suicide or something that had been conducted on him by somebody else; given the testimony of Mrs. Padoch; given all the circumstances, it is absolutely incredible to hear you say that.

My time is running short. I don't want to cut you short.

Mr. HERGEN. I don't want to be argumentative either. Please don't misinterpret what I am saying, Mr. Feighan. I do want to emphasize, however, that on the Coast Guard cutter surrounded by U.S. personnel, military personnel, at that time, Mr. Medvid——

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ENVIRONMENT IN WHICH MEDVID WAS INTERVIEWED

Mr. LANTOS. Which he also viewed as threatening, given the history of the last 4 days, being surrounded by U.S. military personnel, given the history of this, was not a very reassuring thing.

Mr. HERGEN. Thank you for making my point, Mr. Chairman, because it was exactly for that reason. That was one of the reasons that the people on the boat reported back to Washington and said Mr. Medvid wishes to return home, go back to the boat. And the people in Washington told the people on the scene that we are simply not prepared, given the circumstances of this case, to accept it, and we demand, we demand that he be taken to shore and given a good night's sleep and a more thorough examination.

Now, please understand that we did not take these decisions lightly. I understand how concerned you and how concerned the American people are, but you must understand also, sir, that we are people of honor as well. We had a very, very difficult task to perform, and we did it as best we could.

Mr. FEIGHAN. I certainly don't question your honor or your genuine interest in this, Mr. Hergen, but I do question your intransigence or the intransigence of the Department in refusing to open the case. If I could, Mr. Chairman, I would like to ask unanimous consent to have my opening statement included in the record accompanying that being an article by journalist, Mr. Jack Landau,[1] that I think gives the perspective on the procedures that should be followed, and in that respect, I would have to challenge Mr. Nelson's actions that the procedures in place, as he said, are fundamentally sound.

I think it is very clear that they are not.

Mr. LANTOS. Thank you very much.

Congressman Smith of New Jersey.

INS PROCEDURES

Mr. SMITH of New Jersey. Mr. Nelson, in followup to Mr. Feighan's question regarding the idea of standardized questions or procedures, do we have a set of questions that are normally asked of defectors or would-be defectors? For instance, was Mr. Medvid asked if he was harassed?

Furthermore, was he told what the Soviet system most likely would do to him, like incarcerate him? He had made his statement, so to speak—he jumped ship. He asked for asylum. Now, as a matter of telling him what might follow on, and it would seem to me wise to advise him, what were the questions asked him?

Mr. NELSON. Mr. Smith, I don't have all that before me. Some of the procedures are set forth in the attachment to the statement, part of the Code of Federal Regulations and other guidelines go into great depth as to types of interviews to be conducted, the receiving of advisory opinion from the Bureau of Human Rights, and Humanitarian Affairs in the State Department, a very thorough set of issues to be covered, and so on.

[1] See appendix 9.

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I can't comment exactly, but the interviewer in the case should determine what facts they need to allude to. But the main thing, of course, the criteria under the Refugee Act of 1980 is the determination of a well-founded fear of persecution based on the enumerated categories, political, racial, sex, et cetera. Those are the factors they need to determine.

Mr. SMITH of New Jersey. It is my understanding that the interviewer did not ask the question or did not share with Mr. Medvid the fact that he could suffer severe penalties for his action.

Mr. NELSON I am not aware they did. It is possible.

Mr. SMITH of New Jersey. Could we get that for the record?

Mr. NELSON. I would be happy to at some point, yes, sure. As I say, part of the material I submitted to the record earlier was the sworn testimony of Mr. Brandemuehl, who was present. I have not had a chance to read it myself, because it was just unsealed. That might answer some of the questions. It is certainly possible. It would have to be determined by the executive branch about the other statements, and our own investigation can be released. I would hope as much as possible it would be.

Mr. SMITH of New Jersey. As you review your regulations, I would ask you to take into consideration that aspect of it. Certainly the deed has already been done, and for any follow-on defectors, they would be well-advised what the consequences are not for what they will do tomorrow, but what they have already done.

Mr. NELSON. Again, I would like to reemphasize when I say the procedures are fundamentally sound, I stand by that because they certainly were. That doesn't mean they cannot and should not be improved, and that is what we are looking at. I very much appreciate your suggestions, and those of other members of this committee, and we would look forward to hearing from you. We hopefully can learn lessons of how to better handle these cases. That always can be done, and how to avoid this type of situation in the future.

SOVIET MANUAL PERTAINING TO DEFECTORS

Mr. SMITH of New Jersey. One additional question. Mr. Kudirka testified earlier that there was this manual on board each ship. Are you aware of such a manual?

Mr. NELSON. No, sir; I am not.

Mr. SMITH of New Jersey. Could you find out if any of our intelligence officers have seen the manual.

Mr. NELSON. That is a valid issue to look into. I don't have a knowledge of that, and I don't know what our intelligence people may have knowledge of.

Mr. SMITH of New Jersey. Do any other members of the panel—are you aware of that manual of disciplinary action to be taken?

Mr. HERGEN. No, sir.

Mr. GRIMES. I have no knowledge of it either.

Mr. SMITH of New Jersey. Was Mr. Kudirka interviewed as to his knowledge on that? He seems to, having been aboard a ship, having gone through this experience, seems to be a very reputable source.

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Mr. NELSON. I don't know. As I understand, that incident took place 14 or 15 years ago, and I don't know what interviews were conducted.

Mr. SMITH of New Jersey. I would ask Mr. Nelson, if you could do some looking into that issue and maybe for the record get back to this committee and let us know what you find out. I will independently look myself. Thank you.

Mr. LANTOS. Congressman Ritter.

MRS. PADOCH'S INTERVIEW WITH SEAMAN MEDVID

Mr. RITTER. Thank you very much.

I would just like to add, in this controversy about the Russian-speaking versus Ukrainian-speaking, that we would like verification that the State Department interpreter indeed spoke fluent Ukrainian. It is interesting when speaking with Irene Padoch, who does not speak Russian, that the indication is that he said some cursory things in Ukrainian and then went on to speak Russian to Irene Padoch. But I would like to just focus on part of the statement that Mrs. Padoch gave to four of your agents who came to her home in Siosulka.

Item 4,

> The officer instructed me to inform the alien that he would be placed under arrest and detained overnight and that Immigration would speak to him more the next day. The officer also told me to tell the boy that he would not be harmed, that he should go to sleep and relax and that tomorrow we will speak again.

Now, this statement—there has been talk of misunderstanding—but this statement was given as sworn testimony in Federal Court. Now, to the best of your knowledge, is that statement correct?

Mr. NELSON. Mr. Ritter, first of all I don't have that in front of me. I have seen the sworn statement that Mrs. Padoch gave to INS investigators and I might want to again emphasize we sought her without immediately alerting her of this and tracked her down and did take a sworn statement.

I believe her statements have been consistent since that time from what we took from her. We pursued it. We wanted the information ourselves. I know she testified in court, and before the Senate committee.

Mr. RITTER. This is from Edmond Burke. Who took this statement from her, your special agent?

Mr. NELSON. Right. OK. I have seen that statement. I don't have it in front of me, but I have seen it, and what you read, I recall having read. I have no reason to doubt, as I said earlier, the voracity of——

ABSENCE OF CONTACT BETWEEN NEW ORLEANS AND WASHINGTON

Mr. RITTER. Well, that statement, if there is no reason to doubt that statement, indicates that some change occurred within INS. Not a misunderstanding so much as perhaps a purposeful change. I mean, if this is accurate, and it ended up as sworn testimony in the Federal court, then at some point some change was consciously made. Now, to your knowledge, was there any contact between the Border Patrol or INS agents in New Orleans and individuals in Washington, DC, after this statement was made?

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Mr. NELSON. And before the return of Medvid.

Mr. RITTER. And before the return.

Mr. NELSON. Our understanding is there is absolutely no such contact. That was part of the problem. They failed to contact supervisors who would have raised this kind of issue up for review. But we are quite satisfied there was no such contact.

I might indicate, again, I have no reason to doubt her statements on the matter. As I say, the Border Patrol gave their statements. There is a question on this statement about keeping him, as I recall, and I would have to check the record to be sure, but my recollection is that the Border Patrol also in their sworn statement, indicated something about that they would keep him overnight. And it is hard to understand why they changed their mind.

Mr. RITTER. That is an important point, though.

Mr. NELSON. Yes; it is.

Mr. RITTER. Very important point.

Mr. NELSON. And that is something we can further pursue, too, but——

Mr. RITTER. We should.

Mr. NELSON. There is no indication of any contact, no indication of any conscious decision to somehow push him off. It is just a circumstantial analysis that I believe is correct. These gentlemen are dealing with hundreds of ship jumpers all the time. It is a fairly routine kind of thing that in their mind and in their understanding of this—of Mrs. Padoch saying he was not asking for asylum, they concluded he was a ship jumper, and the normal process is to contact the shipping agency, which they did.

Why they said they expected to see him overnight and then decided to contact the shipping agency, I don't know.

Mr. RITTER. And they would not be harmed.

Mr. NELSON. True.

Mr. GILMAN. Would the gentleman yield?

Mr. RITTER. I will yield in a moment; that he should go to sleep and relax and then tomorrow they would speak again. They also, in other words, told Mrs. Padoch that they would speak with her again, but they never attempted to contact her again.

I would like to know, Mr. Hergen, Mr. Nelson, was any contact made after that statement with the State Department? Did any of the INS officials on the scene make any contact with the State Department?

Mr. HERGEN. I am sorry, Mr. Ritter, what is the date of that statement? Forgive me.

Mr. RITTER. That statement was made in the early hours of Friday morning.

Mr. HERGEN. No, sir, we did not.

Mr. RITTER. It was approximately 12:15 a.m., Friday morning.

Mr. HERGEN. Mr. Ritter, according to the best of my recollection, we had absolutely no knowledge whatsoever of any—of these events at all until the late afternoon of Friday.

WHEN WAS WASHINGTON NOTIFIED?

Mr. NELSON. That is my understanding, also, Mr. Ritter, as I mentioned in my testimony. I believe we learned about it at 3 or

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3:30 p.m. on that date. We immediately contacted the State Department. To our knowledge, this was their first knowledge.

Mr. LANTOS. The gentleman's time has expired.

Mr. RITTER. Could I put a bottomline on this, Mr. Chairman.

Mr. LANTOS. Please wrap it up.

Mr. RITTER. I appreciate that. I believe it is absolutely essential that this committee be allowed to understand, explicitly and under oath, what exactly happened when that particular statement was made, what were the actions of the officials on the scene, and whether or not they were in contact with your higher-ups in Washington, DC, and potentially State Department higher-ups in Washington, DC, because something turned this situation around.

We have been here since quarter of 10 this morning, and it is simply not obvious. And you don't have to be a genious to realize that it is simply not obvious as to what happened after Mrs. Padoch gave her information to these officials and their assigning him to some burley sailors to take him back to the ship.

That is the crux of the understanding necessary to this committee. I thank you for your indulgence, Mr. Chairman.

WHY WASN'T MEDVID KEPT OVERNIGHT AS STATED TO MRS. PADOCH?

Mr. LANTOS. Before I call on my next colleague, I want to commend my friend from Pennsylvania for raising this issue. I am puzzled, Mr. Commissioner, that in view of the fact that your employees Thursday midnight said they would keep him there overnight, and get back to Ms. Padoch, why you didn't ask these agents what happened. Why didn't they keep him there overnight? This happened 2 weeks ago, so the pride in handling this, I think, is further diminished.

That should be a key question to be asked right away.

Mr. NELSON. Mr. Chairman, we have submitted a report that is probably 3 inches thick to the Attorney General with statements, analysis and whatever. I can't recall all of it. I read most of it. I can't recall whether that question was asked or not. It is a valid question.

Mr. LANTOS. A very good question.

Mr. NELSON. Yes.

Mr. RITTER. Mr. Chairman, it is not only pivotal, but——

Mr. NELSON. Please understand, it may have been asked. There is a lot of material. It may have been covered.

Mr. RITTER. Mr. Chairman, I tried for days to try to get a copy of Mrs. Padoch's deposition to the four INS officers who visited her in Siosulka, and I couldn't. If you read through it, you will know why I couldn't get a copy of this document. Thank you, Mr. Chairman.

Mr. LANTOS. Congressman Gilman.

PAST CASES OF ATTEMPTED DEFECTIONS

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Nelson, this isn't the first case of this nature, is it? We have had several other cases like this in the past, have we not?

Mr. NELSON. Well, Kudirka's case obviously, we are aware of that, 13 or 14 years ago. In the case of the Russian boy, the diplomat's son several years ago.

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Mr. GILMAN. After the Kudirka case you revised some of your regulations.

Mr. NELSON. That is my understanding. That was before my time here, but I understand that that was a trigger that did lead to the various regulations being changed.

Mr. GILMAN. One of the main thrusts in your regulations is apparently you give immediate notification to higher officials; isn't that correct?

Mr. NELSON. That is correct, sir.

WHEN WAS WASHINGTON NOTIFIED?

Mr. GILMAN. Why did it take more than 24 hours for notification to the State Department? When did you first receive notification?

Mr. NELSON. As I said, Mr. Gilman, I learned of it approximately 3 or 3:30 on the afternoon of Friday.

Mr. GILMAN. That is almost 24 hours after the event.

Mr. NELSON. Well, yes, 12, 15 hours,

Mr. GILMAN. Wait a minute, the event occurred at—he jumped into the river at 7 p.m., Thursday evening. You didn't learn about it until Friday late afternoon.

Mr. NELSON. He was returned to the shipping agent sometime in the midnight range.

Mr. GILMAN. Our people came into contact with him around 10:30 when the harbor police came into contact with him. Why did it take so long for notification to reach you and the State Department?

Mr. NELSON. Because as I think I testified in the statement and on numerous responses to questions, there was an error in judgment and there was a failure to follow——

Mr. GILMAN. That is more than judgment. I thought the regulations require immediate——

Mr. NELSON. That is correct.

Mr. GILMAN [continuing]. Immediate consultation with higher authority.

Mr. NELSON. That is correct and those regulations were not followed.

Mr. GILMAN. And you are sitting here today 2 weeks later telling us you don't know why they were not followed?

Mr. NELSON. Again, Mr. Gilman, I think we have submitted a lot of testimony. We have responded as best we can to your questions. We have submitted a detailed report to the Attorney General. There are many, many questions that have been addressed and so forth, and we are——

Mr. GILMAN. Mr. Nelson, you said to the committee that you didn't see any need for any revision——

Mr. NELSON. No, sir; I did not.

STRENGTHENING EXISTING REGULATIONS

Mr. GILMAN. In your regulations then, what can be done to make certain that this doesn't occur next week or the following month, the following year? What is it that has to be done to make these regulations more explicit so that there is consultation and so that there is not a foul-up of this nature?

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Mr. NELSON. Again, my testimony, Mr. Gilman, was very specific, that those procedures are fundamentally sound in your judgment.

Mr. GILMAN. But they are not being followed apparently.

Mr. NELSON. We have millions of cases, as I indicated earlier, of all types. We have many, many regulations regarding all aspects of immigration procedures, voluminous regulations and procedures. We had a case here of human error. People at times make errors. We all do. We have good regulations but we are looking at them. There have been a number of points raised by members of this committee that are very valid. We have raised many ourselves.

As I indicate, we have established a task force to report preliminarily in about 10 days from now with recommendations to both improve these and to be sure that we do everything possible that it does not happen again.

VIOLATION OF INS REGULATIONS

Mr. GILMAN. Mr. Nelson, if I submit you are saying it is human error seems to be glossing over a gross violation of your regulations.

Mr. NELSON. It is human error. That is not glossing over. It was an error and misjudgment and mismanagement of a situation.

Mr. GILMAN. Was there a violation of your regulations if notice was not given to higher authority immediately upon learning that there was someone who had jumped ship from a Soviet ship?

Mr. NELSON. Yes, sir.

Mr. GILMAN. Has a disciplinary proceeding been undertaken to determine why there was a gross violation?

DISCIPLINARY ACTION AGAINST INS AGENTS INVOLVED IN THE MEDVID CASE

Mr. NELSON. Yes, and I have made the order to our people that I have a recommendation on my desk next Tuesday, the first working day of next week, on recommendations for disciplinary action which I will review.

Mr. GILMAN. That is a recommendation.

What I am asking you is if there is a disciplinary investigation underway at the present time?

Mr. NELSON. Yes, sir. Yes, sir. A full field investigation of all aspects of this, yes, sir, including then the disciplinary aspect.

DELAY IN DISCUSSIONS BETWEEN MEDVID AND WASHINGTON OFFICIALS

Mr. GILMAN. Can I ask you another question. Why did it take 4 days before the Government team from Washington interviewed the seaman?

Mr. NELSON. Immediately upon learning, let me run a little chronology. Friday afternoon, say 3 o'clock, we learned in Washington of this situation. We, immediately as I testified, they were willing to do it just on our request, be sure that vessel did not depart, we immediately notified the State Department within 3 or 4 hours.

We had State Department representatives and INS representatives from Washington on a plane to New Orleans. They were down there. They had a command center there.

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All weekend here in Washington we had a command center. There was extensive negotiations between the State Department and the Soviet officials in which our Government made it absolutely clear that we insisted that seaman Medvid be removed from the Soviet vessel for an interview, and there were a lot of strong negotiations that we prevailed and the Soviets did agree, and thereafter he was taken off.

This took that several days time to get accomplished.

Mr. GILMAN. Took 4 days?

Mr. NELSON. It was from Friday late evening, to I think Monday late evening or late afternoon, that he was removed as I recall.

Mr. GILMAN. He wasn't interviewed until Tuesday.

Mr. NELSON. Monday night first on the U.S. Coast Guard vessel. Then the decision as Mr. Hergen indicated that we determine that we should have a followup interview and remove him to shore, provide the night's rest and so forth.

So that occurred the night of Monday. The date escapes me for the moment.

Mr. GILMAN. That is 4 nights after he jumped ship.

Mr. NELSON. The facts are as they are.

Mr. GILMAN. Mr. Hergen, did you want to comment?

Mr. HERGEN. Yes, sir; Mr. Gilman.

Thank you for the opportunity to correct the record. If I understand the thrust of your question, you want to know the first time we had an actual discussion with Medvid after he was taken back to the MV *Konev*. The fact is that it was Saturday, about 4 o'clock. This would be approximately 24 hours after we first learned of the incident that we had about an hour's our observation of Medvid with a medical doctor.

That was the first time that Medvid himself said he wished to go back to the Soviet Union, and did we have any questions. That was Medvid's first denial. This is like the bellman in the Taming of the Shrew. You know what I said three times is true. This was the first time that we asked Mr. Medvid whether he wished to stay in the United States, and this is the first time he expressed a desire to return. At that time on Saturday he was in good shape according to our doctor, who then examined him.

Does that answer your question, sir.

Mr. GILMAN. Yes. It answers it except that I still question that lengthy delay. At 10:30 p.m. the team assembles on the night before, and you don't get to see him until the following late afternoon, and you don't get to really interview him until 2 days later.

Mr. HERGEN. That is a fair question. We all know that is a fair question, and you have to understand a little bit what happened here.

Mr. GILMAN. I would hope there is going to be some recommendations out of all of this to correct this kind of laxity in either communication to the field people or a laxity in administration that appear to be sound, but are not being pursued.

REGULATIONS OF U.S. CUSTOMS SERVICE

Let me ask Admiral Thompson and Mr. Grimes, what would happen if they came into contact with Customs people or Coast

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Guard people to the first occasion? Do you have similar regulations? Do these regulations apply to your agencies as well?

Mr. GRIMES. Yes, sir. We have similar regulations, regulations call for immediate notification of the State Department, protective custody of the individual involved until it can be determined if the person is seeking asylum. At no time would we return the person to the vessel under the circumstances. I want to make it clear for the record, also, sir, that in this situation we were called in to support INS and the State Department using Customs regulations to keep the ship from moving, and asking for the Coast Guard assistance.

We at no time negotiated with the seaman or were we involved in the negotiations which later occurred.

WHEN WAS CUSTOMS AND COAST GUARD BROUGHT INTO THE MEDVID CASE?

Mr. GILMAN. When were you first called in?

Mr. GRIMES. At 1600 hours or 4 p.m. on the 25th. At that time, we were asked, because we had the ship at anchorage and the Customs clearances were being requested, we were asked not to clear the ship at that point until they could begin their negotiations and work out the situation which had occurred.

Mr. GILMAN. Admiral Thompson, when was the Coast Guard called?

Admiral THOMPSON. We were notified, Mr. Gilman, a little after 4 o'clock on Friday afternoon. We responded in a support role in terms of issuing an order not to sail, putting a security zone around the Soviet vessel during the period of time Mr. Medvid was interviewed; bringing up some vessels of our own, including *Salvia* to assist in the interview; providing transportation back and forth between vessels.

We were never on board the Russian vessel nor did we speak directly with Russian crew.

Mr. GILMAN. You wouldn't have known about the harbor police taking the seaman back to the vessel.

COAST GUARD PROCEDURES

Admiral THOMPSON. We were not notified of that.

Mr. GILMAN. When they talk about the harbor police, is that a municipal organization?

Admiral THOMPSON. That is my understanding, yes, sir. In response to your question about procedures for handling requests for asylum that are made by foreign nationals, yes indeed, we have standard procedures.[1] We accept and we relay asylum requests. Our personnel first encountering an individual requesting asylum, make immediate notification to their operational command, district command, our headquarters, Department of State local center, and the local INS office where it is occurring.

At the same time, our headquarters calls the Department of State operations center to make sure we don't have a disconnect in communication. During that time, we take action to protect the re-

[1] See appendix 10

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questor or, provide protective custody refuge if you would, until approval or disapproval of the request is granted.

INS generally comes and assumes custody from us until the Department of State renders a decision. We have learned this very painfully. It is not any consolation to Mr. Kudirka but we do have lessons learned from each incident. But, it is a continuous training process for us to keep all our personnel trained on how to be aware of and handle potential defector situations.

DELAY IN PHYSICAL ACCESS TO SEAMAN MEDVID

Mr. GILMAN. Mr. Hergen, I would hope that State would assume their responsibility in making certain that the agencies are fully aware of the regulations and to properly pursue the regulation and utilize them in the best manner possible.

Apparently there is some laxity along the way, and I hope you will take a look at it from State.

Mr. HERGEN. Mr. Gilman, I will do whatever I personally can to meet your concerns. I would like to, if I may, make one comment on your questions.

I think everybody is concerned, the American public and also you gentlemen here, about the delay in getting physical access to seaman Medvid. Obviously this is a central concern. I would ask you to understand the circumstances under which this situation unfolded.

The fact that he was on a vessel with a 40- or 50-foot high free board with a gangplank, we had six men on the boat at all times. We were in the middle of a hurricane. The possibility of physical force was certainly present and we did not waiver.

It took time to organize. The State Department was in control on the ground, and there was a lot of organization to be done for the purpose—and I want to assure you of this personally so that you know, so that no one was injured or that there was the least amount of injury possible under the circumstances if we had to remove Mr. Medvid forcibly from the vessel.

So we were concerned with the danger of taking precipitous, hasty action that could harm somebody's life or create serious bodily injury, including I might add, Mr. Medvid. So that was central in our thinking.

Mr. GILMAN. Just one more question, Mr. Chairman.

I know my time has run.

Mr. Nelson, had you received notification immediately, would you have allowed the seaman to be returned to his vessel?

Mr. NELSON. No, sir. If you are talking about immediately after they first had him in our custody?

Mr. GILMAN. Yes.

Mr. NELSON. Absolutely not. Under our procedures, those would have been followed similar to the other agencies here. We all have compararable procedures. He would have been held for further discussions and interviews and what have you.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

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RECCOMENDATIONS FOR DISCIPLINARY ACTIONS

Mr. LANTOS. I have a few concluding questions that I would like to raise.

First, Admiral Thompson and Mr. Grimes, let me apologize to you that you haven't had too much opportunity to speak. The reason for—maybe you welcome that, but the reason is that it seemed to members of the committee that neither the Coast Guard nor Customs did anything that we would criticize and we appreciate your presence here. I merely want to explain to you why we have neglected you.

We have neglected you because there was not much to pursue.

I would like to go back to the judgment call at the end of the episode. I understand, Mr. Nelson, that you admit that mistakes were made. Had the procedures been followed, the developments would have been very different. You just answered Congressman Gilman's question that had you known about it immediately, you obviously would not have taken the action which was taken. We all accept that.

It seems to me that since we are dealing with human lives here in a very real sense, the procedures must involve the kind of clear-cut disciplinary penalty which is forthcoming if these procedures are not followed.

Now, what are those?

Mr. NELSON. As I indicated, Mr. Chairman, I believe in proper management that we get the recommendations of the superiors of the agents, that they be routed through the regional commissioner, and the head of the Border Patrol, to me. As I have indicated, I have asked for those recommendations on next Tuesday, the 12th, at which time I will review them. I will make my assessment of what is the appropriate discipline, based on the facts.

I think as lawyers and as administrators, we must be fair. I will then make my recommendations to the Attorney General.

Mr. LANTOS. I understand that with respect to the specific instance, but my question is a different one. I mean in all of these gigantic agencies, as we all know, there are some rules and procedures which if they are not followed, the consequences are not very severe. In this case, they are very severe. Isn't there some mechanism that needs to be built into your structure so that people know that these are rules and procedures that if they are not followed, very severe and immediate penalties will be meted out. In this case they will be followed.

Mr. NELSON. I understand what you are saying, sir. I think a lot of it goes to the training. We do have extensive training, initial training, followup training. There are many, many regulations, including these. We do present those. Now after this incident, we reaffirmed them to all our offices to be sure they did reemphasize them. They are very important. We handle hundreds of thousands of asylum cases. We think we handle them well.

It is very unfortunate this was not handled well, and we must look at it on a case-by-case basis as to what happened, why, and how we can reaffirm that these procedures are right and will be followed.

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JUSTIFICATION OF THE DECISION TO RETURN MEDVID TO THE "KONEV"

Mr. LANTOS. Mr. Hergen, I want to get back to that repeated statement of Secretary Ridgway, which Mr. Nelson concurs with, that at the end of the interview, since the sailor expressed himself in the direction of wanting to return to the Soviet Union, you felt that that was the right decision.

I feel a fundamental inconsistency in the repeated statements of the government, and the executive branch in this whole episode. You keep saying you were ready to use force if necessary to remove the sailor from the ship to proceed with an interview, but you apparently were not ready to keep him for more than the few hours that you kept him.

Let me ask you a very simple question that the American people are asking, to which I hope you have a good answer.

Mr. HERGEN. I hope so, too, Mr. Chairman.

Mr. LANTOS. I hope so. We all do.

Do you think it would have created a greater diplomatic hassle had you used force or do you think it would have created a greater diplomatic hassle had you decided to give Mr. Medvid another 48 hours or 72 hours? I find it so pathetically inconsistent to express a willingness to use physical force against a Soviet ship and possibly against Soviet personnel, and the pretention of total impotence once this poor fellow says—clearly under duress—he wants to go home; that you simply had no other choice, that the choice was to ask him—given all that preceded—and when he said he wants to go home, that is all you could do.

I am not impressed by the creativity of the Department but I must admit that this lack of creativity I have difficulty believing. Was it specifically considered—you were there—to keep him longer?

Mr. HERGEN. Yes, it was specifically considered on several occasions. We had opportunities, if you will, to honor his request on at least three separate occasions over 3 separate days.

Mr. LANTOS. Say that again.

Mr. HERGEN. We had three separate, discreet occasions, starting on Saturday, the 26th I believe, that the seaman indicated—expressed specifically his desire to either remain on the Soviet vessel or to go home to the Soviet Union.

Mr. LANTOS. But Mr. Hergen, he spoke eloquently when he jumped once and jumped twice, and didn't want to be dragged back. Have you ever heard the saying I cannot hear what you are saying because what you do keeps thundering in my ears?

Mr. LANTOS. He couldn't have spoken more eloquently than he spoke when he made his break for freedom and he made his break for freedom the second time. This was not a dialog in a State Department conference room where somebody says something and you say, well, if that is what he says, that is what it is.

There were preceding actions.

Mr. HERGEN. Chairman Lantos, you know, this is so difficult for me not only professionally.

Mr. LANTOS. It is a lot more difficult for Mr. Medvid than it is for you. I have no sympathy for you. I have a lot of sympathy for him.

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Mr. HERGEN. I was not asking for sympathy at all, sir. What I was suggesting is your questions are very well posed. They make a lot of sense. They are kind of questions—the very questions we asked ourselves throughout the incident.

The thing that disturbs me is the sort of implication not only in this side of the Congress, but in the other House that there was some predisposition to cut a deal or to get this over quickly or to do something to avoid some problem at the summit or something like this.

You know, you are an honorable man and you do a wonderful job at what you do. I like to think I have a lot of honor. I want to tell you that myself, speaking for myself and everybody at the Department of State that I worked with, if there was the slightest hint in our minds about what we were doing, at least I would have gotten up and walked out of the building and never come back.

Mr. LANTOS. Let me accept that. I am not questioning either Secretary Ridgway's or anybody else's good intentions or credibility. I am questioning the repeated insistence ex post facto that your judgment was correct.

Nobody questions your intentions. Isn't it clear since the Senate and the House seem to be increasingly doubtful of the wisdom of that judgment that you could now say on behalf of the Department that the decision to return him right after that traumatic, nightmarish series of episodes that this young man went through was the wrong decision?

I didn't say that you sold him because of the summit. I am saying you made a mistake. I think the State Department at the highest levels and the White House at the highest levels made a horrible mistake and you should be willing enough to admit it.

None of these hearings, the Senate hearing and this hearing, has persuaded a single member, I bet you, that you were right in the decision, in the final decision to send him back in the face of what he had done. How more eloquent can a human being speak than to jump off a ship leaving behind his family, his language, his culture, his country and try to swim for freedom?

What more eloquent testimony do you need? And when he is dragged back, he does it again so six people have to take him back kicking and screaming?

He spoke to you. He may not speak English, but he spoke a very human language. And we can't hear you when you say Monday morning with a Soviet ship captain standing there and the Soviet embassy guy standing there and all these threatening-looking American officials standing there, he said he wanted to go home.

So you decided, well, he wants to go home. That is what the man says. No one believes this. You don't believe it. My question is, was it specifically considered to put him in a truly nonthreatening environment for a period of time, to bring in some Ukrainian-speaking or Russian-speaking grandmothers who reminded him of his mother, to bring a priest, to put him in a setting where he, in fact, felt unthreatened and then fly him back a week later? I don't want to keep the ship here. I think we need to separate the ship from the sailor.

We don't want to create an international incident beyond what has happened. The ship can go. He needs to stay and 2 weeks later

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if he still wants to go back after the Swiss Consul General in New Orleans says we have had all these discussions and he sees the problems and so on, we will let him go.

Of course, we will let him go. We don't want to keep anybody against their will but to pretend to claim that in that horrible, traumatic, nightmarish setting, you ask a few bureaucratic questions and the poor, intimidated soul then says clearly under the influence of threats, "I want to go home," and you say he wants to go home. Nobody will believe you if that is your testimony.

No one on this committee will believe you, or very few people in the country will believe you. There is another message here which I would like both of you to react to, way beyond the issue of seaman Medvid. What message does this send about our commitment to people who are contemplating such action in the future? Everybody sees what we have done.

Everybody sees that the Congress is outraged at the judgments involved, at the actions taken. This goes way beyond the issue of seaman Medvid. This goes beyond the meaning of what the Statue of Liberty is to all these people.

They know what we have done and they are drawing some very, very damaging conclusions, very tragic conclusions.

I wonder if either of you gentlemen would care to address yourselves to the issue beyond seaman Medvid.

Mr. Nelson.

Mr. NELSON. Mr. Chairman, you are very eloquent. Let me just respond to several things. I think we are seeing here an exercise of our form of Government which we can all be proud of—you can be as a member of the legislative branch; I can be as a member of the executive branch—where we have open hearings, open dialog, tough questions, open response, the press available, electronic and printed media to report this. You are saying the whole Congress could not agree and how could any of us agree with this?

I might remind you of the third branch of the Government, the judicial branch. At the beginning of this hearing I submitted for the record three district court decisions. One was not printed but there were three district courts, in Philadelphia, Federal district courts. I don't think you or anybody else or I would question the integrity, the independence of Federal judges.

They had hearings, testimony, considered this matter on three separate occasions which is somewhat rare that you have the same case considered separately by three courts and then the Circuit Court of the District of Columbia, one of the most respected in the country, again reviewed it, issued their opinions and they have dealt with this issue.

They have commented on the result and they have affirmed the executive branch decision here. I know there is difference of opinion. We can all have differences of opinion.

I think as Secretary Ridgway indicated, there was never any time constraint. Initially the thought was that the Soviets said, yes, go ahead and interview him, but do it on our vessel. We said absolutely not, we would not do that even though the American doctor had seen him a few hours into the incident and talked to him.

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He said he wanted to go back. We insisted he be removed. It was then agreed that he go to the Coast Guard cutter. That was done. I am sure the thought of the Soviets was that would be the end of it.

We made a determination both in New Orleans and Washington after consultation that he should have the night's rest and all of the other examinations that were done. There were never any time constraints. The vessel was not leaving for a number of days so there was no pressures there. It was the determination of the people that were on the ground that used their judgment and their evaluation. Again I would commend to you, sir, and the committee, view of the transcript that was given in court: I would commend to the review of you and the committee the medical exams which I hope are submitted because—I have not seen them—I think there might be some interesting analysis there. I would hope those would be looked at before you pass judgment.

You are sitting as a committee and you should consider it. I think Mr. Hergen, Secretary Ridgway, and myself and others have tried to lay out this case. It is unfortunate, of course, that it has had the kind of attention and concern. We are all concerned about it.

Your basic question at the end about what message this sends—well, I would say one thing it sends, again, the process we are going through. We are a free country, democratic discussions and debate and that is very healthy. We show our warts and all out there and I think that is good and I think the rest of the world knows it.

We accept many people, both as immigrants, as indicated, many more—twice as many as the rest of the world combined. You, yourself, sir, came in that vein of refugees.

We are way ahead of the rest of the world in all respects there. We have many thousands of people coming in here claiming and being granted asylum. There is no question we handle it well.

There are unfortunate situations where as human beings, some initial mistakes were made, but we think, as testified to, the analysis was made, the people on the scene felt they had had enough time to evaluate it and make the determination.

Mr. LANTOS. Mr. Hergen.

Mr. HERGEN No, Mr. Chairman. I just want to thank you for the courtesies you have shown us under the circumstances we have here and to express two thoughts. One, that for whatever it is worth—and it may be worth nothing—I can assure you on behalf of the Department that the United States went to very great lengths, spent millions of dollars perhaps to ensure that Seaman Medvid was given a free choice and that we took extraordinary steps to ensure that he was able to make that choice.

I don't think, in response to your question, I don't think, quite frankly, that any other country in the world in similar circumstances would have behaved as magnanimously, as swiftly, as forcibly as we did in this case and I really cannot bring myself to say that the Department of State or the White House or the Justice Department made a mistake after the initial incident.

Thank you so much.

Mr. LANTOS. Admiral Thompson, do you have any observations?

Admiral THOMPSON. No, sir. I have no comment.

Mr. LANTOS. Mr. Grimes.

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Mr. GRIMES. No, sir. Thank you.

Mr. LANTOS. Gentlemen, thank you very much. The hearing is adjourned.

[Whereupon, at 12:55 p.m. the subcommittee adjourned, subject to the call of the Chair.]

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THE CASE OF MIROSLAV MEDVID

THURSDAY, NOVEMBER 7, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met in open markup session at 1:44 p.m., in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell (chairman) presiding.

Chairman FASCELL. The committee will come to order.

We meet this morning to consider several pieces of legislation, copies of which are on the desk before you.

[Whereupon, the committee proceeded to other business.]

Chairman FASCELL. Now, we have one other matter, concerning the case of Miroslav Medvid. Has the resolution been printed up yet?

Mr. GILMAN. Mr. Chairman, it is being typed, and if I could take a few moments, it will be out in just a moment.

If I could just——

Chairman FASCELL. Why don't you go ahead and explain it pending receipt of the draft.

Mr. GILMAN. Mr. Chairman, this morning, the Subcommittee on Europe and the Middle East conducted a hearing with regard to the seaman, Miroslav Medvid, who attempted to leave the Soviet ship and seek refuge in the United States.

We heard extensive testimony this morning about all of the facts surrounding that circumstance and subsequently reviewed informally a resolution, first drafted by Representative Don Ritter of Pennsylvania, expressing the sense of the Congress that this seaman should not be allowed to be removed from the United States until there has been a more thorough investigation. We are calling on the President to undertake whatever feasible steps are possible to conduct a thorough investigation in order to accord him his full rights and a further interview on American soil, and to have an interpreter fluent in his language present while that is done.

We felt that seaman Medvid was treated in a much too arbitrary and too expeditious a manner. The seaman has not had an opportunity to fully express himself, and we are hoping that the President would undertake whatever is necessary to make certain that all of the seaman's rights are fully granted to him.

The resolution will be before us very shortly. I know that Mr.—our good chairman, Mr. Hamilton, may have some comments, as well as Mr. Smith, who was present at our hearing this morning.

Mr. HAMILTON. Would the gentleman yield?

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Chairman FASCELL. Mr. Hamilton.

Mr. GILMAN. I would be pleased to yield to the gentleman.

Mr. HAMILTON. First of all, I urge the adoption of the resolution.

Second, I want to say to Mr. Gilman and Mr. Lantos—I guess he is not here—express to them my appreciation for presiding at the hearing this morning. I was not able to be there because of a conference on the intelligence authorization bill. They deserve high credit, I think, and praise from all of us for highlighting this issue, and for going ahead with the hearing. We are all in their debt.

This is an important resolution. We all have concerns about the circumstances surrounding the incident of this young seaman's possible defection and then redefection. We want his rights to be respected. We want his freedom of choice to be honored. We want to assure that the procedures that the U.S. Government follows are such that these defectors are appropriately treated.

And I think it is quite appropriate for us to urge the President to take all possible feasible steps to assure that those rights are respected.

I urge the adoption of the resolution.

Chairman FASCELL. Mr. Lagomarsino.

Mr. LAGOMARSINO. Mr. Chairman, I support the resolution and hope the committee adopts it.

Mr. SMITH of New Jersey. Will the gentleman yield?

Chairman FASCELL. Yes.

Mr. SMITH of New Jersey. I will be very brief, Mr. Chairman.

The hearing this morning provided many useful insights, and I think many of us are concerned over how the INS handled the situation in the State Department.

There were some unanswered questions, several unanswered questions. As a matter of fact, Mr. Medvid twice stated that he was seeking asylum, he wanted to come and live in this country, and when he went back to the Soviet ship apparently had a change of heart due to coercion, where some other kinds of pressures were leveled against him.

Unfortunately, we may or may not know what went on during that period of time, but certainly if we can get him back on U.S. soil so that he can be interviewed further we can decide what action we should take.

Hence, I think Mr. Gilman's resolution is a very constructive step in that regard.

Chairman FASCELL. The clerk will now read the resolution.

Mr. BRADY [reading]:

H. Res. 314. Expressing the sense of the United States House of Representatives that Miroslav Medvid should be accorded all the rights due him as a potential defector.

Whereas Miroslav Medvid, a Ukrainian sailor on board the Soviet ship Marshall Konev jumped into the Mississippi River and swam ashore on October 24, 1985;

Whereas he indicated that he sought refuge in this country;

Now therefore be it

Resolved,

That it is the sense of the United States House of Representatives that——

1. The President protect the human rights of Miroslav Medvid by taking every feasible step to accord to him all the rights due him as a possible defector;

2. The President should ensure that Mr. Medvid is afforded an interview on American soil, with an interpreter fluent in Ukrainian, in an environment free of

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fear or intimidation so that Medvid may freely decide whether to restate and have granted his initial request for asylum; and

3. The President should pursue an active and impartial investigation into the facts and circumstances of the Medvid case so that no similar tragic and improper mishandling of a political asylum case will ever again cast its shadow on our principles of liberty and freedom again.

Mr. GILMAN. Mr. Chairman, I move the resolution.

Mr. FEIGHAN. Mr. Chairman?

Chairman FASCELL. Mr. Feighan, first, and then Mr. Weiss.

Mr. FEIGHAN. Mr. Chairman, I would like to ask the sponsor of the resolution if he would be willing to accept an amendment that would read as follows:

In the second clause of the "Resolved section," the language would read:

So that Medvid may freely decide whether to restate and have granted his initial request for asylum; and that Mr. Medvid be provided an opportunity to meet with relatives who live in the United States.

Mr. Chairman, and Mr. Gilman, the reason I am offering that amendment, as you know from comments this morning at the hearing, there are three individuals, two of whom live in my congressional district, who trace a very close relationship to Mr. Medvid, and have been in New Orleans since Sunday of this week, attempting to deliver some communication with him, and working with the State Department to get some opportunity to meet with him, because they feel that that would perhaps influence his decision as to whether or not he would want to stay in the United States.

So, I would ask concurrence of that amendment.

Mr. GILMAN. Mr. Chairman, I have no objection to the amendment.

Chairman FASCELL. Is there any further discussion on the amendment?

[No response.]

Chairman FASCELL. Without objection, it is agreed to.

Mr. Weiss.

Mr. WEISS. Mr. Chairman, given that the impetus for this resolution comes, to a great extent, from the minority on this committee and within the House, it is very difficult for a member such as myself to raise questions. I must say, however, that implicit in this resolution is a very clear-cut criticism—and that is the mildest word, I guess, that one could use—of the conduct of the administration, from the President on down, on this entire matter.

The suggestion implicit in this is that in some way the President of the United States has not taken steps to protect the human rights of Miroslav Medvid, and that the State Department, although it interviewed him, I think, for 4 days, has not been concerned about getting a clear statement of Mr. Medvid's intentions or in adequately following through on the statements, that he did make. This resolution implies that, in spite of the involvement of a number of departments and officials of the administration, and I assume of a communication, from the Secretary of State to the President himself, there was less than total concern with the intent of this Ukrainian sailor.

Now, those are very, very serious imputations, it seems to me——

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Mr. GILMAN. If the gentleman would yield?

Mr. WEISS. Well, just 1 second, and I would be pleased to.

And if, in fact, that is the intent of the minority, far be it from me to oppose it, but I just would want the record to indicate clearly what is being suggested by this resolution.

I would be pleased to yield to my colleague.

Mr. GILMAN. I thank the gentleman for yielding.

Of course, that is not the intent of the resolution. If the gentleman had been present—and perhaps he was at part of the hearing this morning, he would have heard an admission that there was laxity at some of the lower echelons, that they did not fulfill their responsibilities.

The administration was then confronted with a delay in having an opportunity to meet with the seaman, and then the seaman expressed an unwillingness to make a further petition for asylum and indicated that he wanted to return.

What this resolution does, simply, is to make certain that that seaman has a further opportunity of expressing himself and that we more fully explore whether or not that seaman wants to stay in the United States or return home, considering the fact that he jumped ship and then jumped from the cutter on a second occasion that night, and whether that initial intent is, compared to the present intent, is a logical explanation of what he truly wants to do.

We want to give him the further opportunity to explain himself and to set forth his true intentions and motivations.

The gentleman has the time.

Mr. WEISS. No; I would be pleased to continue to yield to the gentleman.

Mr. GILMAN. I would be pleased to yield to the gentleman from New York.

Mr. WEISS. I appreciate what the gentleman is saying, and, as I say, given his strong concern as expressed in this resolution, I cannot express my opposition to it. I just think that it is somewhat awkward for me to appear to be the defender of the administration and especially of the State Department, as I have done on a number of occasions now, but I think I have done as much as I want to under the circumstances.

Chairman FASCELL. Mr. Mica?

Mr. MICA. Mr. Chairman, I will not speak specifically to the resolution. I will support it, but just to inform the committee with regard to this resolution, our subcommittee has already asked for a very detailed and documented explanation from the State Department.

I understand the Subcommittee on Europe and the Middle East has also been looking into it, and we have also been trying to contact the interpreter involved in the incident. So we are attempting to try to get the facts in the matter. I do not have a problem with the resolution but I thought the committee should know that.

Chairman FASCELL. Mr. Levine?

Mr. LEVINE. Yes, Mr. Chairman.

In light of the colloquy between the two gentlemen from New York, I would just like to make one point.

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I had the privilege of attending some of the hearing of the Europe and the Middle East Subcommittee this morning. I was astonished, I must tell you, during the time that I sat in on the hearing, at the combination of stonewalling and intransigence from the head of the Immigration and Naturalization Service. I believe that the language of this resolution, particularly the final clause, is totally appropriate in light of what I heard at that hearing and I think it is worth stressing it, so that no similar tragic and improper mishandling of a political asylum case will ever again cast its shadow on our principles of liberty and freedom.

That is exactly the issue that most poignantly came to light in the context of the hearing this morning, and I would have certainly felt better myself if the man in charge of the Immigration and Naturalization Service had even begun to acknowledge slightly the reality of that point.

And I commend the author of this resolution for wording the resolution precisely as he has.

Mr. SMITH of New Jersey. Would the gentleman yield?

Chairman FASCELL. Mr. Smith.

Mr. LEVINE. I would be happy to.

Mr. SMITH of New Jersey. I think the record should clearly show that he did, indeed, acknowledge that there was a mishandling in the beginning.

As a matter of fact, he said, "That's a given. It's a granted."

And so I think the record was very clear on that. It was what followed thereafter that he addressed himself to, and what actions should follow on now.

So, that was made very clearly in the hearing.

Chairman FASCELL. Mr. Lagomarsino.

Mr. LAGOMARSINO. Mr. Chairman, I think one thing should be mentioned here too. I attended part, not all, the hearing, so I may have missed something in relation to what I am going to say.

But Mr. Alan Nelson, head of Immigration, did say also that it was being investigated and that he had asked the Department of Justice for recommendations on what should be done in the way of disciplinary action against the original agents, and he would take that action probably next week.

Mr. Chairman, I think in one—I have one suggestion for a grammatical change, I think, in No. 3, the last word. "Again" should be stricken, because you already say "will ever again cast its shadow on our principles of liberty and freedom again."

Chairman FASCELL. You are right.

Mr. LAGOMARSINO. The period should be after "freedom."

And I think, in order to be accurate, at the end of the sentence, starting with No. 2, the word "additional" should be—or some like word should be—inserted because Mr. Medvid was afforded some interviews. We can argue, and have been arguing, whether they are sufficient, whether he should have been kept longer or not, but I think it would be more accurate if we added the word "additional."

Chairman FASCELL. Right.

Mr. LAGOMARSINO. And I would ask the gentleman if he would accept that amendment.

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Mr. GILMAN. I would be pleased to accept the amendment, Mr. Chairman.

Chairman FASCELL. Is there any objection?

[No response.]

Chairman FASCELL. Without objection, those amendments are agreed to.

Mr. Gilman.

Mr. GILMAN. Mr. Chairman, just one last comment.

I would like to commend the gentleman from Pennsylvania, Congressman Ritter, for having undertaken the initiative for bringing this measure initially before our committee.

I urge my colleagues' support of the resolution.

I move the adoption of the resolution.

Chairman FASCELL. The question now occurs on H.R. 314, as amended.

All those in favor, signify by saying aye?

[A chorus of ayes]

Chairman FASCELL. All those opposed, no.

[No response]

Chairman FASCELL. The ayes have it.

The resolution is agreed to.[1]

Mr. GILMAN. I would like to ask consent that additional cosponsors may be added to the measure.

Chairman FASCELL. Without objection.

Anybody who wants to cosponsor can certainly do that, and you can put me on as a cosponsor too.

The full committee stands adjourned.

[Whereupon, at 2:40 p.m., the committee was adjourned.]

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[1]On November 12, 1985 H. Res. 314 was passed by the House as amended by a vote of 405 to 3.

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APPENDIX 1

Approximate Chronology of the Incident Involving Seaman Miroslav Medvid October 24-29, 1986, Prepared Prior to the Hearing by Subcommittee Staff, and Chronology Prepared by the Department of State

Thursday Evening, October 24:

-- Early evening, sometime after 7 p.m. Seaman Miroslav Medvid jumps overboard from his Soviet Ship, the Marshali Konev, at anchor near Belle Chasse, Louisiana;

-- About 7:30 p.m. Seaman Medvid meets Joe Wyman, owner of J&L Jewelry store in Belle Chasse as he prepares to close shop. Communication is difficult, but Wyman ascertains that Medvid wants to go to New Orleans. Wyman's nephew drives Medvid to New Orelans and the French Quarter arriving there roughly 30 minutes later;

-- Five minutes after Seaman Medvid and younger Wyman leave, three Soviet sailors arrive at jewelry store asking if anyone saw a lost seaman wandering around. Wyman is suspicious and says no;

-- New Orleans police officer asks him to show his leave papers, there is a language problem, Seaman Medvid becomes nervous and leaves station he had entered voluntarily; some 15 minutes later Medvid re-enters the police station and shows some papers, but no passport;

-- The New Orleans Police Department contacts the New Orleans Harbor Police and proceeds by agreement to transport Seaman Medvid by car to the port and to the jurisdiction of the Harbor Police;

-- Medvid spends 30 minutes in the jurisdiction of the Harbor Police and they ascertain, despite language problems, that Seaman Medvid is probably Russian and may want to defect;

-- Harbor Police calls in two Immigration officers with the Border Patrol at about 10:25 p.m. The Border Patrol officers take Seaman Medvid and indicate they would get an interpreter to meet them and find where his ship was located;

-- Between 10:45 p.m. and 11:00 p.m. Irene Padoch, an occasional interpreter for INS, is called at her home in New York for the purpose of talking with Seaman Medvid by phone. A 40 minute conversation ensues. Mrs. Padoch says that Seaman Medvid wanted to stay in the U.S. and not go home. It was her understanding that the Border Patrol would call her to talk to Seaman Medvid again the following morning. That conversation did not occur. Border Patrol acts on the belief that Medvid indicated his desire to return home;

-- After midnight the Border Patrol contacts the agent for Universal Shipping Agents, Inc., which handles Soviet shipping in the Louisiana ports. The agent, Mr. Thomas Richard, is told "we have this Soviet sailor, put him back on the ship." Richard asks if there are not different procedures for Soviet sailors who jump ship. The Border Patrol reiterated that Seaman Medvid should be put back on his ship;

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Friday, October 25:

-- The shipping agent contacted Port Ship Services at 1:00 a.m. to arrange for passage of the seaman back to his ship;

-- At 1:30 a.m. Raymond Guthrie, boat operator for Port Ship Services is contacted and requested by the shipping agent to return the sailor to his ship;

-- Roughly 1:30 a.m. Seaman Medvid, a Border Patrol officer, an agent for Universal Shipping and Guthrie depart by launch for the Soviet ship;

-- When they arrive at the ship, a Soviet sailor boards the launch, words are exchanged between Medvid and the Soviet sailor and Seaman Medvid jumps in the water again and starts swimming to shore;

-- Guthrie's launch follows Medvid to shore. When they arrive, the Border Patrol officer and the Soviet sailor hold on to Seaman Medvid while Guthrie returns to the Soviet ship, picks up roughly 6 Soviet sailors and returns to shore with them;

-- The Soviet seamen then escort Seaman Medvid back to his ship and he is, according to Guthrie, dragged screaming up the gangplank;

-- About 2:45 p.m., Friday, Customs and Border Patrol Officials board the Soviet ship asking to see Seaman Medvid. The request is granted. They observe Medvid to be sedated, with bandages on his left arm and arms tied to the bed;

-- Apparently after contacting the Soviet Embassy, the U.S. officials are removed from Medvid's room but allowed to remain on board the Soviet ship;

-- At 2:40 p.m. State Department is informed of the Medvid case; Russian-speaking Foreign Service Officer and Assistant Legal Adviser dispatched to the scene;

-- At 10:30 p.m. U.S. team of roughly six officials assemble on the M.V. Konev, including Department of State, INS, Treasury Department and U.S. Navy physician.

Saturday, October 26:

-- At 3:00 p.m. U.S. officials view Medvid for the first time since Friday afternoon. U.S. Navy doctor conducts preliminary physical exam; Medvid appears in generally good condition, as reported by the State Department. Medvid expresses desire to return to the U.S.S.R.; State reserves judgment until formal interview off the Soviet vessel in a non-threatening environment can be arranged.

Sunday, October 27:

-- Negotiations conducted between the Department of State and the Soviet Embassy in Washington to arrange the transfer of Medvid to U.S. Coast Guard buoy tender Salvia.

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Monday, October 28:

-- After Hurricane Juan abates, Medvid transferred at 4:00 p.m. to the Salvia and interview begins at 4:30 p.m., conducted by State Department with U.S. Navy doctor, INS official, U.S. Russian-language interpreter, two officials from the Soviet Embassy, a Soviet doctor and the Captain of the Konev present;

-- Shortly after the interview begins, Medvid becomes nauseous. He is treated by a U.S. doctor and Soviet doctor. When Medvid feels better, interview resumes. In long interview of over 90 minutes Medvid gives elliptical but positive answers to the question whether he wishes to return to the U.S.S.R.;

-- After interview Department of State decides to give Medvid the opportunity to get a good night's sleep on shore;

-- At 10:30 p.m. Medvid and accompanying U.S. and Soviet representatives transferred to Naval Support Facility on shore;

-- Upon arrival Medvid given a physical exam lasting 45 minutes including checking eyes and reflexes, but not including blood or urine tests, followed by one hour of psychological evaluation.

Tuesday, October 29:

-- Medvid relaxes until approximately 2:00 a.m. Tuesday watching TV, especially interested in coverage about himself;

-- Medvid wakes up at 8:00 a.m. after six hours of sleep, after breakfast participates in a 2-hour interview with U.S. Air Force psychiatrist, another medical exam;

-- At 12 Noon U.S. representatives reconvene interview with Medvid. Medvid reaffirms his repeated statements that he wishes to return to the U.S.S.R;

-- U.S. representatives adjourn the meeting to seek instructions from Washington;

-- At 2:45 p.m. interview reconvened and Medvid is asked whether he now wishes to sign a Russian-language statement confirming his wishes to return to the Soviet Union. Medvid makes small changes in the statement and signs;

-- At 4:30 p.m. Medvid released and returned to the Konev. U.S. considers the case closed.

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CHRONOLOGY OF EVENTS IN THE CASE OF SEAMAN MEDVID

(Times are approximate)

October 24

-- p.m.	Medvid leaves the M.V. Konev.
7-7:30 p.m. (CST)	Medvid encounters the Wymans, who take him to a Police Station.
10:19 p.m. (CST)	Police turn Medvid over to Border Patrol.
10:19 p.m. - 00:45 a.m. (CST)	Border Patrol interviews Medvid; translation supplied by INS interpreter Padoch by telephone.

October 25

00:45 a.m. (CST)	Border Patrol turns Medvid over to shipping agent of the M.V. Konev.
1:30 a.m. (CST)	Shipping agent departs by launch to return Medvid to the M.V. Konev.
3:00 p.m. (EST)	Border Patrol/INS Headquarters in Washington is first notified of Medvid case.
2:45 p.m. (CST) (3:45 EST)	Three INS/Border Patrol agents board the M.V. Konev, including one who interviewed Mevid on shore the night before. They see Medvid, who appears sedated. Border Patrol Agents remain on the M.V. Konev until Medvid is removed to the Coast Guard Cutter Salvia on October 28.
3:40 p.m. (EST)	INS Border Patrol notifies Department of State. State requests Coast Guard and Treasury to take steps to hold the M.V. Konev; decides to send State Department representatives to New Orleans.
10:30 p.m. (CST)	Department of State representatives board the M.V. Konev; until Medvid is transferred to Coast Guard Cutter on October 28, a Department of State representative remains on ship at all times.

October 26

3:00 p.m. (CST)	Department of State representative and Navy Doctor see Medvid; doctor examines him in the sick bay of the M.V. Konev. He appears in generally good condition and states he wishes to return to the USSR.

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p.m.	Professional interpreter engaged by the Department of State arrives in New Orleans and boards the M.V. Konev; interpreter remains there until Medvid is removed to the Coast Guard Cutter Salvia on October 28.
October 28	
4:30 p.m. (CST)	Medvid is transferred to the Coast Guard Cutter Salvia; he becomes ill during interview, is examined by U.S. doctor, rests, interview continues; Medvid states he wishes to return to the USSR.
11:15 p.m. (EST)	Department of State representative advises Washington and is instructed that Medvid should get a good night's rest on shore. Over strong Soviet objections, he is transferred to the naval shore facility; he is examined by the Navy Doctor and Air Force psychiatrist; watches T.V. until he goes to bed.
October 29	
a.m.	After breakfast, Medvid is again examined by Air Force psychiatrist; he then relaxes.
noon (CST)	Interview resumes; Medivd continues to state he wishes to return home to USSR. Interview adjourned while U.S. representatives seek instructions from Washington
3:45 p.m. (EST)	The White House, Justice and State authorize State Department representative to ask Medvid to sign a statement that he wishes to return to the U.S.S.R. After making a few word changes, Medvid signs the statement and is escorted back to the M.V. Konev.

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APPENDIX 2

STATEMENT OF THE DEPARTMENT OF STATE CONCERNING MIROSLAV MEDVID AND STATEMENT SIGNED BY SEAMAN MIROSLAV MEDVID

Beginning at 3:40 p.m. EST, on Friday, October 25, when it was first informed of this case, the Department of State has been attempting to determine the intentions of Soviet Seamen Miroslav Medvid.

The Department immediately dispatched a Russian-speaking Foreign Service Officer and an Assistant Legal Adviser to the scene. The Department also requested that the U.S. Coast Guard take steps to prevent the departure of the M.V. Konev.

From approximately 10:30 p.m., the United States had a team of at least six officals on the Soviet vessel at all times until Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on October 28. This team was comprised of representatives of the Department of State, the Immigration and Naturalization Service (INS), the Treasury Department and a U.S. doctor. Beginning the evening of October 26, an expert Russian interpreter retained by the Department of State was also on the scene to ensure there would be no difficulty in communicating with Seaman Medvid.

When U.S. officials first observed Seaman Medvid on the M.V. Konev on the afternoon of Friday, October 25 they reported that he appeared to be sedated. U.S. officials next saw Medvid on Saturday October 26 at approximately 4:00 p.m EST at which time a U.S. Navy doctor conducted a preliminary physical exam. Medvid appeared to be in generally good condition. During the exam he stated that he wished to return to the USSR and asked whether we had any questions for him. At that time, the State Department representative replied that we would reserve our questions until we could arrange a formal interview off the Soviet vessel. We insisted on a non-threatening environment in which to conduct the interview.

As a result of diplomatic discussions between the Department of State and the Soviet Embassy in Washington, it was agreed that Seaman Medvid would be transferred from the M.V. Konev to the U.S. Coast Guard Cutter Salvia for an interview in an environment where he would be free from coercion. This transfer occurred without incident at approximately 5:30 p.m. EST, when Hurricane Juan abated. Upon arrival on the Salvia, we began the interview. The interview was conducted by a State Department representative. Also present were a U.S. military doctor, an INS official, our interpreter, two officials from the Soviet Embassy, a Soviet doctor and the Master of the M.V. Konev.

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However, shortly after the interview began, Seaman Medvid became nauseous and was taken to the Salvia's sick bay for treatment by U.S. and Soviet doctors. When he felt better the interview resumed. Although Medvid did not respond to some questions concerning events of the past few days, he repeatedly stated that he wanted to return to the Soviet Union. However, because we wanted to be absolutely certain that Seaman Medvid understood he had a clear choice, and considering his sickness earlier that evening, the Department of State decided that Seaman Medvid should be given an opporunity to get a good night's sleep on shore. A U.S. Government military facility was selected for this purpose.

At approximately 11:15 p.m. EST, Seaman Medvid and the accompanying U.S. and Soviet representatives were transferred to a nearby Naval Support Facility. Upon arrival on shore, the party was transferred to the facility by motor vehicle. Upon arrival at the naval facility, Seaman Medvid was given a through physical exam nation which lasted approximately 45 minutes and a psychological evaluation which lasted approximately one hour. He then relaxed by watching T.V. and was especially interested in coverage about himself. At approximately 2:00 a.m. CST., he went to his room where he slept until around 8:00 a.m. CST with no one else present. After breakfast Seaman Medvid participated in an extended interview with a U.S. Air Force psychiatrist.

At approximately 1:00 p.m. EST the U.S. representatives reconvened the interview with Seaman Medvid. The U.S. interviewer questioned him extensively concerning his wishes and assured him he would not be subject to prosecution or forced to return to the custody of Soviet authorities. If he chose, he could leave immediately with U.S. authorities. He was alert and was determined by U.S. medical, legal and other representatives to be competent to make a decision concerning whether he wanted to remain in the U.S. During the final interview, Seaman Medvid reaffirmed his repeated statements that he wished to return to the USSR. The U.S. representatives adjourned the interview to seek instructions from Washington

At 3:45 p.m. EST the White House, the Department of State, the Department of Justice and INS instructed the U.S. representatives to reconvene the interview and to ask Seaman Medvid whether he now wished to sign a Russian language statement confirming his wishes. Seaman Medvid signed this statement. We then released Seaman Medvid for return to the M.V. Konev in accordance with his wishes. The United States Government considers this matter closed.

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STATEMENT SIGNED BY MIROSLAV MEDVID

I, MIROSLAV MEDVID, HAVE DECIDED TO RETURN TO MY COUNTRY, THE SOVIET UNION. I DO NOT REQUEST ASYLUM IN THE UNITED STATES. I MAKE THIS DECISION VOLUNTARILY OF MY OWN FREE WILL, AFTER HAVING HAD FULL OPPORTUNITY TO DISCUSS MY SITUATION WITH OFFICIALS OF THE UNITED STATES, WHO HAVE MADE CLEAR THAT I MAY REMAIN IN THE U.S. IF I DESIRE. I HAVE DECIDED NOT TO DO SO. I AM IN FULL CONTROL OF MY PHYSICAL AND MENTAL FACULTIES AND UNDERSTAND FULLY THAT I WOULD HAVE BEEN FREE IMMEDIATELY TO DEPART THIS INTERVIEW IN THE COMPANY OF UNITED STATES OFFICIALS, AND THAT IF I HAD CHOOSEN TO DO SO, I WOULD NOT HAVE BEEN RETURNED TO THE CUSTODY OF SOVIET OFFICIALS.

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APPENDIX 3

Sworn Affidavit by Mrs. Irene Padoch, Contract Interpreter for the U.S. Immigration and Naturalization Service

AFFIDAVIT

The affiant, first being duly sworn, deposes on oath and states as follows:

1. I am of sound mind and lawful age and make this affidavit of my own free will.

2. I reside at 71 East 7th Street, New York, New York 10003.

3. I am employed on a contract basis as a certified English-Ukrainian-Polish interpreter by the Immigration and Naturalization Service, U.S. Department of Justice.

4. On or about 11:45 p.m. on the evening of Thursday, October 24, 1985, I received a telephone call from an INS officer in Louisiana. He informed me that he was holding an individual who needed a Ukrainian interpreter.

I asked the as yet unidentified individual whether he heard me. He said yes, I hear you beautifully. He said, you have to come to me here immediately. I replied, I am too far, I am in New York.

I asked all the questions asked by the INS officer. We started with name, and he answered Myroslav Vasiliovych. I asked his family name and he replied, Medvid, like the animal. [Medvid in Ukrainian means

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bear.] His father is Vasyl Medvid, his mother, Anna Lakhovsky. Medvid stated if I could not understand, he could speak in Polish, because his mother was of Polish ancestry. The conversation continued in Ukrainian, by agreement.

He stated he was from Lviv oblast (region), Ukraine. He stated he was from the Sokal region, village of Silets. He was born there. His father lives in that village and he was born there as well.

There were no questions asked regarding his education. I had difficulty hearing the INS officer, who appeared to be on a second phone. I had to repeat various questions and answers several times on numerous occasions. The conversation took a long time, about one hour.

I had no difficulty in hearing and understanding Medvid. I asked him before each question whether he heard and understood me. He replied affirmatively each and every time.

He was asked how long he had been on shore. Medvid could not tell. He suggested 4 - 6 hours, and added, that the official should know, unless he can't see that I (Medvid) am still wet.

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He stated he did not see any Immigration officials board the ship and said the ship was standing in line. He said he did not see any inspection.

He said he jumped because he wanted to live in an honest country. In response to the question regarding the particular reason for jumping, Medvid responded there were many reasons which could not be told in a short time. The INS officer tried to get some more particulars, but the response was the same: a lot of reasons.

The INS officer became impatient and asked me to ask whether he wanted political asylum, because he could keep him here only under those circumstances. I asked him that and he unhesitatingly responded "yes."

The INS officer asked again and the response was the same.

Medvid stated he was very much afraid and wanted to know what would happen to him. The INS officer told me to calm him down and no harm would come to him. Medvid would be arrested and he would stay that way until the next morning when INS would call me again.

I told the officer that I would be leaving New York next afternoon.

Medvid protested his arrest; said he did nothing wrong and was never arrested in his life.

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The officer said he would call again the next day. He did not call, despite my waiting. I did not leave New York until Saturday morning.

I gave a 5-page statement under oath to INS investigators who came to my summer house on Sunday morning, before 6:00 a.m., on October 27, 1985.

One of the agents told me that "somebody goofed and that he should jump into the Hississippi himself."

Further affiant sayeth not.

Irene Padoch
IRENE PADOCH

Subscribed and sworn to before me this 1st day of November, 1985.

Elizabeth A Gibbs
Notary Public
District of Columbia

My commission expires June 14, 1990

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Sayuziwka Asso
Ukranian National Estate
Kerhonkson, New York

October 27, 1935, 7 A.M.

Being duly sworn, I, Irene Podock, make the following statement before Special Agent Edmund R. Bauke, United States Immigration and Naturalization Service. This statement is made freely and without reservation.

① Why did the alien, Myroslaw Medwid, jump ship?

A: Myroslaw Medwid told me that he wanted to live in an honest country. He stated that he could not tell me all the reasons in a few minutes, but that it was for political and moral reasons. He stated that he was very much afraid.

② Were you instructed to ask if he wanted political asylum?

A: Yes, the officer told me to ask him if he would like to ask for political asylum.

③ What was Miroslaw Medwid's answer to that question?

A: He told me without hesitation, that yes he wanted

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political asylum.

④ What did the officer state after being informed that the alien wanted political asylum.

A: The officer instructed me to inform the alien that he would be placed under arrest and detained overnight, and that the Immigration would speak to him more the next day. The officer also told me to tell the boy that he would not be harmed, that he should go to sleep and relax and that tomorrow we will speak again.

⑤ What was the reaction of Mrosław Madwid?

A: The boy told me that he was very much concerned and wanted to know why he was arrested. He said that he would not relax, rest and that he would stay awake all night and sit in a chair.

⑥ Why was the alien afraid to go back to the Ship

A: He never stated ~~that~~ why he was afraid to go back to the Ship, but he stated he was afraid to go back to USSR.

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(7) Did you specifically ask, "do you want to apply for political asylum?"

A: The investigator asked me to ask that question, and I did.

(8) Did you contact anyone concerning Mussaw Medwid?

A: Yes, I spoke to Dr. Alexander Sas-Jaworsky in Abbeville, Louisiana.

(9) Do you have his telephone number available at this time?

A: No. I'm sorry, but the telephone number is in my home in New York City and not with me at the moment.

(10) Why did you disclose your communication with Immigration and Medwid to anyone?

A: No I did not disclose any communication that I had with the Jay to Dr. Sas-Jaworsky. I only called him to ask if I could join the

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Immigration Service his telephone number so that they could use him as an interpreter and eventually to possibly help the boy. I was going upstate to New York; my phone is disconnected and nobody would be able to contact me. I also told him not to speak to anybody, just wait until he was contacted by Immigration.

(11) How did you do the interpreting. Was it Verbatim or Synopsis?

A: I did not do a Verbatim translation, I told what the boy told me, and I said my ~~what~~ what the Investigator said, nothing more.

(12) How did the issue of asylum come about? What did you say and what did the Immigration Officer tell ~~him~~ you?

A: The Immigration Officer asked me to ask him if he wanted political asylum to stay here and the alien said yes.

I have read the foregoing four page statement and to the best of my recollection it is the truth the whole truth and nothing but the truth. I have initialed each page.

Diane D. Sadley

Edmund R. Banks, Special Agent

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APPENDIX 4

ORDER OF THE U.S. COURT OF APPEALS FILED NOVEMBER 5, 1985; ORDER OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA; AND TESTIMONY OF ASSISTANT COMMISSIONER BRANDEMUEHL OF THE INS BORDER PATROL

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6062 September Term, 19 85

Civil Action No. 85-3487

UKRANIAN-AMERICAN BAR ASSOCIATION, INC., et al.

Appellants,

v.

GEORGE P. SHULTZ, et al.

Appellees

United States Court of Appeals
For the District of Columbia Circuit

FILED NOV 5 1985

GEORGE A. FISHER
CLERK

Before: Robinson, Chief Judge, Starr, Circuit Judge and McGowan, Senior Circuit Judge

ORDER

Upon consideration of appellants' emergency motion for an injunction pending appeal and in the alternative for an expedited consideration of the appeal of the District Court's order denying injunctive relief, the opposition and reply thereto, and the argument of counsel, it is,

ORDERED, by the Court, for the reasons stated in the accompanying memorandum, that the motion is denied.

Per Curiam

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6062 **September Term, 19** 85

UKRAINIAN-AMERICAN BAR ASSOCIATION, INC., et al.

Appellants

v.

GEORGE P. SCHULTZ, et al.

Appellees

CA No. 85-3487

United States Court of Appeals
For the District of Columbia Circuit

FILED NOV 5 1985

GEORGE A. FISHER
CLERK

MEMORANDUM ATTACHMENT TO PANEL ORDER ISSUED

EARLIER THIS DATE.

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No. 85-6062 Ukrainian-American Bar Association, Inc., et al. v. Shultz, et al.

MEMORANDUM

This matter is before the court on a motion for an injunction pending appeal and, in the alternative, for expedited consideration of the appeal. The case arose out of a well publicized incident in Louisiana on October 24, 1985, when, according to the complaint, a Soviet merchant seaman, Myroslav Medvid, jumped off a Soviet freighter, the Marshall Koniev, which was situated on the Mississippi River south of New Orleans. This incident was quickly followed by a series of events in Louisiana and elsewhere, culminating in the filing of the present lawsuit in United States District Court for the District of Columbia on November 1, 1985. The lawsuit was brought by the Ukrainian-American Bar Association, the Ukrainian Congress Committee of America, the Ukrainian Human Rights Committee, Inc., and two named individuals in their individual capacities and as friends of Myroslav Medvid. The named defendants were the Secretary of State, the Commissioner of the Immigration and Naturalization Service, and John Doe, "the owner-operator-agent-pilot-navigator-tugboat operator of the ship, Marshall Koniev, and of all other vessels and personnel necessary to guide said ship through United States waters." Complaint ¶ 5. The plaintiffs asserted jurisdiction under 28 U.S.C. §§ 1331(a), 1346(a)(2), and the United States Constitution. Id. ¶ 6.

The gravamen of the complaint was that Seaman Medvid had unlawfully been returned by INS officers to the Marshall Koniev against his will and in the face of his express desire to seek asylum in the United States. Specifically, according to the complaint, Seaman Medvid had asserted his wish to seek asylum in the course of a long-distance telephone conversation that occurred at approximately 11:45 p.m. on October 24, 1985 with an INS contract interpreter, Irene Padoch, who spoke with

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Seaman Medvid in Ukrainian. Mrs. Padoch, the complaint alleged, telephonically translated this information to U.S. officials in charge on the scene.[1] Nonetheless, INS officials, according to the complaint, promptly returned Medvid to the Soviet vessel, whereupon he once again jumped ship, only to be apprehended by Soviet sailors who "forcibly removed him [from United States soil] despite his violent resistance." Id. ¶ 8. This forcible return of the Soviet seaman was effected, the complaint alleged, in violation of U.S. laws and regulations.

The complaint further alleged that subsequent interviews with Medvid off the Soviet vessel were conducted in a "coercive and threatening" atmosphere in that Soviet authorities were present throughout the questioning; that Medvid was not given the opportunity to speak through a Ukrainian interpreter; and that Medvid, among other things, was "drugged or otherwise suppressed by the Soviets prior to the interrogation" and was not allowed to speak to or engage a Ukrainian-speaking or other attorney. Id. ¶ 11.

The District Court promptly convened a hearing on Friday evening, November 1, 1985, on plaintiffs' application for a temporary restraining order. During the course of the proceedings, the District Court heard the in camera testimony of Roger P. Brandemuehl, an Assistant Commissioner of INS in charge of the U.S. Border Patrol. Based on testimony at the hearing, the argument of counsel, and Mr. Brandemuehl's in camera testimony, the District Court denied the plaintiffs' request for temporary relief. The court concluded that it was "not persuaded that the conclusion that Medvid was voluntarily departing the United States was arbitrary or capricious." Memorandum Order at 4. To the contrary, the court determined that "[t]he government made a bona fide effort to ascertain whether Medvid sought asylum." Id. Under all the circumstances, the District Court

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[1] The complaint alleged that Seaman Medvid communicated to Mrs. Padoch his desire to "live in an honest country" and to " 'seek political asylum in the United

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held, the Government's conclusion that Medvid had not in fact sought asylum was neither arbitrary nor capricious. Id. The court attached to the order a Statement Concerning USSR Seaman Medvid dated October 29, 1985, which set forth the chronology of events once the Department of State was first informed of the matter at 3:40 p.m. EST on Friday, October 25, 1985.

On Saturday, November 2, 1985, at approximately 5:45 p.m., plaintiffs filed the present appeal and their motion for injunction pending appeal. On Sunday, November 3, 1985, the appellees filed their opposition to the motion. Appellees asserted the following points: (1) that the present action is barred by the doctrine of res judicata, inasmuch as these plaintiffs (save for the two named individuals) had filed a virtually identical suit in the Eastern District of Pennsylvania, which had denied the plaintiffs' request for temporary relief; (2) that jurisdiction had been asserted in part under the Tucker Act, 28 U.S.C. § 1346(a)(2), and that as a result jurisdiction over the appeal lies exclusively in the United States Court of Appeals for the Federal Circuit, id. § 1295(a)(2); and (3) that the complaint is nonjusticiable inasmuch as plaintiffs lack standing and seek extraordinary relief "that would violate the boundaries of permissible judicial intervention by requiring this Court to intrude into the foreign relations power, a power reserved by the Constitution to the Executive Branch." Opposition at 2.

Pursuant to the court's directive issued on Sunday, November 3, plaintiffs-appellants filed a reply to the Government's Opposition on Monday, November 4, 1985, addressing in particular the contention that the present action was barred by the preclusion principle of res judicata. The court heard argument of counsel on the afternoon of November 4, 1985.

Based upon our careful review of the entire record in this case and the extensive arguments of able counsel, we conclude that the extraordinary relief

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sought by appellants must be denied. Before examining the merits of this motion, however, several threshold issues raised by the Government can readily be resolved. First, we are persuaded at this preliminary juncture that the Government has failed to establish that the action is, under the circumstances here, barred by res judicata. From this record, it appears that the District Court in the Eastern District of Pennsylvania denied plaintiffs' request for temporary relief based upon the failure to adduce evidence in support of its request. When plaintiffs thereafter located their principal witness, the INS interpreter, Mrs. Padoch, the District Court in Philadelphia was promptly notified of her availability, but it appears that plaintiffs were informed that the court would not take evidence that afternoon (Friday, November 1). With the witness situated at the time in Washington, D.C., plaintiffs thereupon filed suit that afternoon in federal district court here, adding a second count to the complaint and adding two individual plaintiffs. Under these unusual circumstances, we cannot conclude on this record that the District court in Philadelphia actually rendered a final judgment on the merits of the plaintiffs' request for injunctive relief, without having even heard from plaintiffs' chief witness.

Second, we are unable to conclude at this preliminary stage that the Government has adequately established that plaintiffs lack standing. While the expedition of appellate proceedings has rendered impossible the full and careful consideration of this question, we are persuaded based on the record before us that, under the unusual circumstances presented here with Seaman Medvid presently on board a Soviet vessel, plaintiffs have colorably established their own standing, United States v. SCRAP, 412 U.S. 669, 688-90 (1973), and adequately established standing under principles of jus tertii. See Craig v. Boren, 429 U.S. 190, 194-97 (1976); Barrows v. Jackson, 346 U.S. 249, 255-58 (1953); Bell &

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Howell Co. v. NLRB, 598 F.2d 136, 142-45 (D.C. Cir. 1979), cert denied, 442 U.S. 942 (1979).[2]

Third, at oral argument the plaintiffs in essence conceded that they erred in invoking the Tucker Act, 28 U.S.C. § 1346(a)(2), in the first instance. As we now understand their argument, their complaint is grounded entirely in federal question jurisdiction, id. § 1331, and mandamus jurisdiction, id. § 1361. We are thus not faced, upon analysis, with a failure of jurisdiction that might otherwise have infected this appeal and required either dismissal or transfer of the appeal to the United States Court of Appeals for the Federal Circuit. See, e.g., Van Drasek v. Lehman, 762 F.2d 1065 (D.C. Cir. 1985); Denton v. MSPB, 768 F.2d 422 (D.C. Cir. 1985).

As to the merits of the motion, we have carefully considered and evaluated appellants' various contentions. We accept, as the Government conceded for purposes of argument, that the INS' initial action in returning Seaman Medvid to the Marshall Koniev was violative of INS regulations governing the processing of applications for asylum. See Part 208, "Asylum Procedures," 8 C.F.R. §§ 208.1-.16 (1984). Under those procedures, an application for political asylum is to be made on Form I-589, "Request for Asylum in the United States," Id. § 208.2. The application is then to be processed in accordance with specific, detailed procedures, including a request for an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs of the State Department. Id. §§ 208.7; 208.10(b).

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2 Our decision in this respect is limited in nature, namely that the Government has failed to establish lack of standing during the course of these expedited motion proceedings. Appellants have expressly alleged injury to their own interests, as well as their right under jus terti principles to assert claims on behalf of Medvid. Moreover, two named individuals (not parties to the E.D. Pa. action) assert their status as next friend to Medvid. Our conclusion at this threshold juncture is obviously limited to the specific circumstances before us, namely that Medvid did indeed articulate a desire to seek asylum in the United States and that, by virtue of what for litigation purposes has been conceded to be INS' errors in returning him to the Soviet ship, Medvid himself is now in no position to assert his own interest in court.

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While the specific events which occurred in connection with Medvid's forcible return on two occasions to the Soviet vessel have not been developed in the record, it appears that, for purposes of this appeal (as well as in the District Court), the Government has conceded that the requisite procedures, carefully crafted to assure the thorough and considered evaluation of a request for asylum, were violated here. Inasmuch as INS, like all agencies, is bound to follow its own procedures, see, e.g., Jean v. Nelson, 727 F.2d 957, 976 (11th Cir. 1984), affd., 105 S. Ct. 2992 (1985), the admitted violations would assist the appellants measurably in establishing one of the requisite elements of injunctive relief, namely the likelihood of success on the merits. See Wisconsin Gas Co. v. FERC, 756 F.2d 669 (D.C. Cir. 1985); Virginia Petroleum Jobbers Ass'n v. FTC, 252 F.2d 921 (D.C. Cir. 1958).

While it is clear as a general proposition that judicial relief may be available for unlawful actions committed by the Executive Branch, even in areas touching on foreign relations, see Reid v. Covert, 354 U.S. 1 (1957); Youngstown Sheet & Tube Co. v. Sawyer, 327 U.S. 304 (1946), this principle does not allow the court blindly to issue injunctive relief without due consideration for the doctrine of separation of powers. Thus, the district court's inquiry could not stop simply upon finding a potential violation of agency regulations. The court also had to examine whether the equitable remedy being sought could properly be granted. Appellants contended that the remedy they requested was appropriate under 8 C.F.R. § 215 (1984), which allows the Government temporarily to prevent the departure of an alien from the United States if doubt exists as to whether the alien is leaving the United States voluntarily. The crucial question, then, was whether Medvid was being forced to leave the country involuntarily.

The critical events which followed INS' initial errors satisfy us that the District Court quite correctly concluded that the Government's ultimate decision

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in this matter — that Seaman Medvid finally decided not to seek asylum — was not shown by plaintiffs in these injunctive proceedings to be arbitrary and capricious. Based upon our review of the in camera testimony,[3] we are persuaded that the Government's October 29, 1985 Statement reflects an accurate summary of the events which occurred after the INS's initial mishandling of this matter. Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on Monday, October 28 at approximately 5:30 p.m. EST. An interview to determine his intent was conducted by a State Department representative. After a brief interlude when Medvid, upon becoming nauseous, was taken to the Salvia's sick bay for treatment, the interview was resumed, during which Medvid repeatedly stated that he wanted to return to the Soviet Union. To ensure the voluntariness of his statements and responses, Medvid was removed from the Salvia and housed in a U.S. Naval facility for the night of October 28. On the following day, after a medical examination by a U.S. physician and a partial interview by a U.S. psychiatrist, the interview was then resumed by U.S. officials at the U.S. Naval facility. Medvid was assured that he would not be prosecuted in the U.S. and that he would not be forced to return to Soviet custody. Medvid steadfastly and consistently stated that he wanted to return to the U.S.S.R., ultimately signing a written statement in Russian confirming his wishes. The procedures were, in a word, thorough and studied. On the record before us, there was not only no rush to judgment, but to the contrary,

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[3] We reject appellants' contention that the District Court erred by permitting Mr. Brandemuehl to testify in an in camera proceeding outside the presence of plaintiffs' counsel and without opportunity for cross-examination. Based upon the specific circumstances before him, the District Judge acted entirely properly and well within his sound discretion in having this sensitive testimony adduced in the manner accomplished in this case.

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there was a continued effort over several days and on U.S. territory to ascertain Medvid's true wishes.[4]

The narrow question before the District Court was whether the Government acted arbitrarily and capriciously in determining that Medvid wanted to return to the U.S.S.R. On review, the question before us is whether the District Court erred as to a matter of law or otherwise abused its discretion. Doran v. Salem Inn, Inc., 422 U.S. 922, 931-32 (1975). On this limited record, and at this preliminary juncture in this litigation, we conclude that the District Court correctly determined that the action here was not shown to be arbitrary and capricious. In addition, we can find no legal error on this record in the Government's actions following the removal of Medvid to U.S. facilities; we discern in the pertinent regulations no requirement that, under the circumstances present here, the Government was obligated in the subsequent interviews to follow the specific procedures enumerated in Part 208 of 8 C.F.R., namely furnishing Medvid with an I-589 application form for requesting asylum.

Finally, we conclude that the specific relief sought by the appellants, namely a mandatory injunction preventing the Marshall Koniev from leaving the United States, Complaint at 7, and an order requiring "[t]he boarding of the Marshall

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[4] Appellants also allege that Medvid was not provided with a Ukrainian interpreter during these State Department-conducted interviews. On this record, however, we are unable to find any evidence that Medvid was unable to communicate in or understand Russian. In addition, appellants allege that the subsequent interviews conducted on the cutter and at the Naval facility were, in effect, tainted by the presence of Soviet officials. But whatever its practical force, appellants' argument in this respect is severely undercut by the fact that nothing to which we have been pointed in the applicable statutes and regulations prohibits the procedures employed here. In the absence of controlling statutory or regulatory provisions, the determination of how to conduct such asylum-related procedures is a matter entrusted to the perogative of the Executive. We certainly are unprepared to conclude, particularly on this limited record, that the mere presence of Soviet officials at interivews conducted by U.S. officials at U.S. Government facilities vitiated Medvid's free will.

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Koniev and the seizure of plaintiff, Medvid, by United States authorities and p'acement in a 'safe house' pending a complete . . . investigation," id., would directly enmesh the judiciary in the most delicate and sensitive matters at the heart of this Nation's foreign relations. See, e.g., Goldwater v. Carter, 444 U.S. 996 (1979). We decline appellants' invitation, albeit motivated by laudable and humanitarian concerns, to embroil the judiciary in matters entrusted to the political branches.[5]

For these reasons, we conclude that appellants have demonstrated no likelihood of success on the merits, and thus their motion for an injunction pending appeal, and alternative motion for expedited consideration of the appeal, must be and hereby is

Denied.

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5 Obviously, the Executive in the discharge of its constitutional power is at liberty to pursue whatever course of action, including that urged by appellants, that is deemed appropriate under the circumstances.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UKRAINIAN-AMERICAN BAR ASSOCIATION, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 85-3487
GEORGE P. SHULTZ, et al.,	)	
Defendants.	)	

FILED
NOV 1 1985
James F. Davey, Clerk

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs' application for a temporary restraining order. Plaintiffs' complaint and request for injunctive relief relates to Myroslav Medvid (also named as plaintiff in this matter), a citizen of the Soviet Union who is currently on board the Marshall Koniev, a Soviet freighter that will be departing from United States territory imminently. Medvid on October 24, 1985 and October 25, 1985 attempted to flee the Soviet vessel; but was returned to the vessel by officers of the United States Immigration and Naturalization Service ("INS"). Plaintiffs' complaint further alleges that on or about October 29, 1985 the State Department interrogated Medvid in the presence of Soviet authorities and embassy officials. Upon the conclusion of State Department and INS officials that Medvid voluntarily sought to return to the Soviet Union, Medvid returned to his ship. Plaintiffs by this action assert that there is substantial doubt that Medvid is in fact voluntarily departing

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the country, and that the Court should therefore require defendants to prevent his departure, at least until the Ukrainian-American Bar Association can interview him about his wishes. Plaintiffs invoke regulations promulgated by the Immigration and Naturalization Service which state as follows:

> § 215.2 Authority of departure-control officer to prevent alien's departure from the United States.
>
> (a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

8 C.F.R. § 215.2(a) (1985). Section 215.3(j) of the regulations indicates that an alien's departure from the United States shall be deemed prejudicial where "doubt exists whether such alien is departing or seeking to depart from the United States voluntarily . . . ."

Upon consideration of plaintiffs' brief and the testimony and argument at the hearing, together with the in camera*/ testimony of Roger Paul Brandemuehl, Assistant Commissioner of the United

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*/ In reliance on representations on behalf of the United States, that testimony in open court and cross-examination of witnesses to the interviews of Medvid on October 28 and 29 might endanger the foreign relations of the United States, the Court received the testimony of Mr. Brandemuehl on the record in camera. The testimony will be filed under seal and available to the appellate court.

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States Border Patrol, the Court finds as follows:

1. Plaintiff Ukrainian-American Bar Association has standing under Barrows v. Jackson, 346 U.S. 249 (1953) and Bell & Howell Co. v. N.L.R.B., 598 F.2d 136 (D.C. Cir. 1979), cert. denied, 99 S. Ct. 2885 (1979) to file a complaint on behalf of Medvid, and, it is assumed, in its own right as an association of lawyers protective of political refugees to sue for access to him. Jean v. Nelson, 727 F.2d 957 (11th Cir. 1984), affd., 105 S. Ct. 2992 (1985).

2. This Court has jurisdiction to determine whether defendants have acted arbitrarily or capriciously when they determined that they did not doubt Medvid was seeking to depart hte United States voluntarily. Jean, supra.

3. Plaintiffs have offered testimony of an INS interpreter, Irene Padoch, that she learned through a telephone interview of Medvid on October 24, 1985, that Medvid sought political asylum in the United States. This is corroborated by the fact that he twice fell, or jumped, from his ship into the Mississippi and swam ashore.

4. Defendant has traversed that testimony with that of Brandemuehl, Chief of the Border Patrol of the U.S. Immigration and Naturalization Service. Brandemuehl was present at all of the interviews of Medvid which were held in New Orleans after the October 24 interview with Padoch, INS interpreter. In an in camera hearing, Brandemuehl testified under oath and went into some detail as to the facts outlined in the Statement Concerning

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USSR Seaman Medvid dated October 29, 1985 tendered by the United States and attached hereto and made a part hereof. In the course of this testimony, the witness demonstrated from his long experience as a border patrol officer and from close observation and supervision of the New Orleans interviews of Medvid on October 28 and 29 that although before the interviews Brandemuehl entertained some doubts about whether Medvid was departing or seeking to depart the United States voluntarily, after the interviews and Medvid's response to repeated questions as to whether he sought asylum or wished to stay in the United Staces, Brandemuehl had no doubt that Medvid was leaving voluntarily.

5. The Court is not persuaded that the conclusion that Medvid was voluntarily departing the United States was arbitrary or capricious. The government made a bona fide effort to ascertain whether Medvid sought asylum. In all the circumstances, its negative conclusion was neither arbitrary nor capricious. Accordingly, the application by plaintiffs for a temporary restraining order is denied.

Date: November 1, 1985

Louis F. Oberdorfer

UNITED STATES DISTRICT JUDGE

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October 29, 1985

STATEMENT CONCERNING USSR SEAMAN MEDVID

Beginning at 3:40 p.m. EST, on Friday, October 25, when it was first informed of this case, the Department of State has been attempting to determine the intentions of Soviet Seamen Miroslav Medvid.

The Department immediately dispatched a Russian-speaking Foreign Service Officer and an Assistant Legal Adviser to the scene. The Department also requested that the U.S. Coast Guard take steps to prevent the departure of the M.V. Konev.

From approximately 10:30 p.m., the United States had a team of at least six officals on the Soviet vessel at all times until Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on October 28. This team was comprised of representatives of the Department of State, the Immigration and Naturalization Service (INS), the Treasury Department and a U.S. doctor. Beginning the evening of October 26, an expert Russian interpreter retained by the Department of State was also on the scene to ensure there would be no difficulty in communicating with Seaman Medvid.

When U.S. officials first observed Seaman Medvid on the M.V. Konev on the afternoon of Friday, October 25 they reported that he appeared to be sedated. U.S. officials next saw Medvid on Saturday October 26 at approximately 4:00 p.m EST at which time a U.S. Navy doctor conducted a preliminary physical exam. Medvid appeared to be in generally good condition. During the exam he stated that he wished to return to the USSR and asked whether we had any questions for him. At that time, the State Department representative replied that we would reserve our questions until we could arrange a formal interview off the Soviet vessel. We insisted on a non-threatening environment in which to conduct the interview.

As a result of diplomatic discussions between the Department of State and the Soviet Embassy in Washington, it was agreed that Seaman Medvid would be transferred from the M.V. Konyev to the U.S. Coast Guard Cutter Salvia for an interview in an environment where he would be free from coercion. This transfer occurred without incident at approximately 5:30 p.m. EST, when Hurricane Juan abated. Upon arrival on the Salvia, we began the interview. The interview was conducted by a State Department representative. Also present were a U.S. military doctor, an INS official, our interpreter, two officials from the Soviet Embassy, a Soviet doctor and the Master of the M.V. Konev.

FILED
NOV 1 1985
JAMES F. DAVEY, Clerk

Attachment
C4. 85-3487
Ukrainian Am Bar Ass

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However, shortly after the interview began, Seaman Medvid became nauseous and was taken to the Salvia's sick bay for treatment by U.S. and Soviet doctors. When he felt better the interview resumed. Although Medvid did not respond to some questions concerning events of the past few days, he repeatedly stated that he wanted to return to the Soviet Union. However, because we wanted to be absolutely certain that Seaman Medvid understood he had a clear choice, and considering his sickness earlier that evening, the Department of State decided that Seaman Medvid should be given an opporunity to get a good night's sleep on shore. A U.S. Government military facility was selected for this purpose.

At approximately 11:15 p.m. EST, Seaman Medid and the accompanying U.S. and Soviet representatives were transferred to a nearby Naval Support Facility. Upon arrival on shore, the party was transferred to the facility by motor vehicle. Upon arrival at the naval facility, Seaman Medvid was given a through physical examination which lasted approximately 45 minutes and a psychological evaluation which lasted approximately one hour. He then relaxed by watching T.V. and was especially interested in coverage about himself. At approximately 2:00 a.m. CST., he went to his room where he slept until around 8:00 a.m. CST with no one else present. After breakfast Seaman Medvid participated in an extended interview with a U.S. Air Force psychiatrist.

At approximately 1:00 p.m. EST the U.S. representatives reconvened the interview with Seaman Medvid. The U.S. interviewer questioned him extensively concerning his wishes. and assured him he would not be subject to prosecution or forced to return to the custody to of Soviet authorities. If he chose, he could leave immediately with U.S. authorities. He was alert and was determined by U.S. medical, legal and other representatives to be competent to make a decision concerning whether he wanted to remain in the U.S. During the final interview, Seaman Medvid reaffirmed his repeated statements that he wished to return to the USSR. The U.S. representatives adjourned the interview to seek instructions from Washington.

At 3:45 p.m. EST the White House, the Department of State, the Department of Justice and INS instructed the U.S. representatives to reconvene the interview and to ask Seaman Medvid whether he now wished to sign a Russian language statement confirming his wishes. Seaman Medvid signed this statement. We then released Seaman Medvid for return to the M.V. Konev in accordance with his wishes. The United States Government considers this matter closed.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UKRAINIAN-AMERICAN BAR ASSOCIATION, et al.,

Plaintiffs,

v.

GEORGE P. SHULTZ, et al.,

Defendants.

Civil Action No. 85-3487

FILED
NOV 6 - 1985
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

O R D E R

On November 6, 1985, this Court ordered that defendants show cause by 2:00 p.m. why part, if not all, of the transcript of the in camera testimony of Assistant Commissioner Brandemuehl of the INS should not be filed free of seal. Based upon the in camera showing made by defendants it is

ORDERED that the following redactions be made in the transcript to be filed free of seal: p. 7 lines 17-18; p. 8 lines 18-23; p. 15 lines 21-25; p. 16 lines 1-21; p. 37 lines 19-22; p. 41 lines 9-15, and it is

FURTHER ORDERED that the redacted version of the transcript attached hereto shall be filed free of seal, and it is

FURTHER ORDERED that the information contained in the redacted lines remain under seal of this Court, and it is

FURTHER ORDERED that the attached declaration of Robert L. Bombaugh, may be filed on the public record, and it is

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FURTHER ORDERED that defendants shall report promptly to this Court what portions of the in camera proceedings, conducted in response to the show cause order, they believe should be maintained under seal of this Court, and it is

FURTHER ORDERED that a copy of the attached, redacted transcript shall be furnished forthwith to plaintiffs' counsel.

November 6, 1958
4:00 P.M.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICTOF COLUMBIA

UKRAINIAN-AMERICAN BAR ASSOCIATION, INC., et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 85-3487
GEORGE P. SHULTZ, et al.,	)	
Defendants.	)	

DECLARATION

I, Robert L. Bombaugh, declare as follows:

1. I am the Director of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice.

2. On information and belief I hereby affirm that the language used by the interpreter and Mr. Medvid on October 28-29, 1985, was Russian rather than Ukrainian as indicated at page 11 of the transcript of Mr. Brandemuehl. The interpreter, however, was conversant in both Russian and Ukrainian.

I declare the foregoing true and correct under penalty of perjury, this 6th day of November, 1985, at Washington, D.C.

Robert L. Bombaugh
ROBERT L. BOMBAUGH

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UKRANIAN-AMERICAN BAR ASSOCIATION, ET AL.,)

PLAINTIFFS,)

V.) CIVIL ACTION NO. 85-3487

GEORGE P. SHULTZ, ET AL.,)

DEFENDANTS.)

FILED
NOV 1 - 1985
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

WASHINGTON, D. C.

NOVEMBER 1, 1985

(EXCERPT ONLY)

THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING BEFORE THE HONORABLE LOUIS F. OBERDORFER, UNITED STATES DISTRICT JUDGE, AT 5:30 O'CLOCK P. M., PURSUANT TO NOTICE.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ANDREW FYLYPOVYCH, ESQ., PAUL D. KAMENAR, ESQ., AND MICHAEL WARIS, JR., ESQ.

FOR THE DEFENDANTS:

JOHN OLIVER BIRCH, ESQ., ROYCE LAMBERTH, ESQ., MICHAEL MARTINEZ, ESQ., AND ROBERT L. BOMBAUGH, ESQ.

- - -

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PROCEEDINGS

(IN CHAMBERS)

(PRESENT DURING THIS PROCEEDING WERE JOHN OLIVER BIRCH, ESQ., ROYCE LAMBERTH, ESQ., MICHAEL MARTINEZ, ESQ., ROBERT L. BOMBAUGH, ESQ., AND CRAIG LAWRENCE, ESQ., ON BEHALF OF THE GOVERNMENT.)

THE COURT: DO YOU WANT TO SWEAR THE WITNESS?

THE DEPUTY CLERK: YES. WOULD YOU RAISE YOUR RIGHT HAND? DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU SHALL GIVE THE COURT IN THE CASE NOW ON HEARING WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MR. BRANDEMUEHL: YES.

WHEREUPON,

ROGER PAUL BRANDEMUEHL

WAS CALLED AS A WITNESS, AND, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED, AS FOLLOWS:

MR. BOMBAUGH: I WOULD JUST LIKE TO MAKE ONE PRELIMINARY REMARK, IF I MAY, YOUR HONOR, ABOUT THE THRUST OF THE TESTIMONY, BECAUSE THE TESTIMONY IN THE COURTROOM WAS ON THE EVENTS ON THURSDAY NIGHT.

THIS WITNESS WILL NOT TESTIFY WITH RESPECT TO WHAT HAPPENED ON THURSDAY NIGHT AND FRIDAY MORNING.

THE COURT: YOU ARE TALKING ABOUT THE 24TH AND THE 25TH?

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MR. BOMBAUGH: YES.

THE COURT: ALL RIGHT.

MR. BOMBAUGH: THE THRUST OF THIS TESTIMONY WILL BE TO EVENTS THAT WERE TAKEN SUBSEQUENT TO THE 24TH AND THE 25TH.

THE COURT: ALL RIGHT.

MR. BOMBAUGH: AND I WOULD ALSO ADVISE YOUR HONOR THAT THE ATTORNEY GENERAL HAS ORDERED A FULL AND THOROUGH INVESTIGATION WITH RESPECT TO THE EVENTS OF THE 24TH AND THE 25TH, WHICH IS UNDER WAY AND PROBABLY WILL NOT BE COMPLETED UNTIL EARLY NEXT WEEK.

THERE ARE THE RIGHTS OF A BORDER PATROL AGENT INVOLVED WHO, I UNDERSTAND WITHOUT TALKING TO HIM, HAS SOME DIFFERENT VERSION OF THE EVENTS.

BUT I DON'T THINK IT IS RELEVANT TO WHERE WE ARE, BECAUSE WE ARE PREPARED TO ASSUME AT THIS POINT THAT A MISTAKE WAS MADE.

CERTAINLY, VERY STRENUOUS EFFORTS WERE UNDERTAKEN TO MAKE SURE THAT WE KNEW THAT WE HAD SOMEBODY WHO WAS NOT SEEKING ASYLUM.

THE COURT: ONE THING OCCURRED TO ME AFTER WE LEFT THE COURTROOM, AND I WOULD LIKE TO REPAIR THIS WHEN WE GO BACK. I WOULD LIKE TO HAVE AN EXPLANATION FROM YOU ALL ON THE RECORD, TO THE EXTENT THAT YOU CAN MAKE ONE, OF WHY YOU REQUIRE THIS IN CAMERA ASPECT OF THE PROCEEDING.

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I WOULD BE GLAD TO HEAR YOU NOW BEFORE THE WITNESS TESTIFIES.

MR. BOMBAUGH: ALL RIGHT.

THE BASIC PROBLEM, YOUR HONOR, IS THAT THE WITNESS WAS IN ATTENDANCE THROUGHOUT THESE PROCEEDINGS, AND, WHILE HE DID NOT ENGAGE IN EVERY ACTIVITY, MANY OF THE ACTIVITIES HE ENGAGED IN, AND MUCH OF THE INFORMATION THAT CAME TO HIM, WAS HIGHLY SENSITIVE.

ALTHOUGH HE DID NOT DIRECTLY NEGOTIATE WITH THE SOVIETS, HE HAS SOME KNOWLEDGE WITH RESPECT TO THE SUBSTANCE OF THOSE NEGOTIATIONS AND THE POSITIONS THAT WERE TAKEN AND THE ACTIONS THAT WERE PLANNED BY THE UNITED STATES, YOUR HONOR.

THE COURT: IS THAT GERMANE TO MY PURPOSES?

MR. BOMBAUGH: PARDON?

THE COURT: IS THAT INFORMATION GERMANE TO THIS? THAT IS MY QUESTION.

MR. BOMBAUGH: I THINK IT IS, BECAUSE IT IS CERTAINLY GOING TO BE GERMANE IF YOUR HONOR DISAGREES WITH US ON THE JURISDICTIONAL ARGUMENTS AND THE LEGAL RIGHTS. BECAUSE THE SAME PROBLEMS ARE GOING TO IMMEDIATELY CONFRONT US ON REMEDY.

THE COURT: ALL RIGHT.

MR. BOMBAUGH: SO I THINK YOU SHOULD KNOW.

THE COURT: ALL RIGHT.

Thomas Toros K. Der Dourian
Official Court Reporter

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MR. BOMBAUGH: I SHOULD ALSO MAKE THIS PREFATORY STATEMENT: THAT THERE WAS -- MR. SPEAKES MADE A PUBLIC STATEMENT --

THE COURT: WHOM?

MR. BOMBAUGH: MR. SPEAKES, THE PRESIDENTIAL PRESS SECRETARY, SAID THAT THE PRESIDENT HAD INDICATED THAT IF THE SOVIETS HAD NOT BACKED DOWN, WE WERE PREPARED TO USE FORCE.

THE COURT: ALL RIGHT.

MR. BOMBAUGH: SO THAT THAT MUCH IS PUBLIC, BUT THE DETAILS ARE NOT.

THE COURT: WELL, NOW, WHILE MR. -- WHAT IS YOUR NAME, AGAIN, SIR?

THE WITNESS: BRANDEMUEHL, SIR.

THE COURT: WHILE MR. BRANDEMUEHL IS TESTIFYING, I WANT ONE OF THESE FELLOWS WITH AN AGILE BRAIN TO BE THINKING ABOUT WHAT THE UNITED STATES WANTS TO SAY ON THE RECORD WHEN WE GO BACK INTO THE COURTROOM, TO GIVE, IF IT IS POSSIBLE, A SANITIZED VERSION OF THE TESTIMONY THAT IS FORTHCOMING.

SO ONE OF YOU LISTEN TO THIS WITH THAT IN MIND, PLEASE.

ALL RIGHT. LET'S PROCEED.

MR. BOMBAUGH: MAYBE THE WITNESS CAN RESPOND TO A QUESTION, BECAUSE I THINK THERE HAS BEEN SOME INFORMATION PROVIDED IN THE FORM OF A PRESS RELEASE THAT COVERS SOME

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OF THESE EVENTS.

WELL, MAYBE WE OUGHT TO START AT THE BEGINNING.

THE COURT: PLEASE DO.

DIRECT EXAMINATION

BY MR. BOMBAUGH:

Q. WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

A. ROGER PAUL BRANDEMUEHL.

Q. WOULD YOU STATE YOUR CURRENT POSITION?

A. YES. I AM THE ASSISTANT COMMISSIONER FOR THE BORDER PATROL.

Q. AND WHERE IS YOUR OFFICE LOCATED?

A. HERE IN WASHINGTON, D. C., 425 I STREET.

Q. WOULD YOU SUMMARIZE JUST BRIEFLY YOUR RESPONSIBILITY?

A. YES. I AM IN CHARGE OF DIRECTING AND PLANNING THE OPERATIONS OF THE UNITED STATES BORDER PATROL.

Q. WAS THERE A TIME SOMEWHERE ON OR AFTER OCTOBER 24TH WHEN YOU BECAME AWARE OF SOME EVENTS CONCERNING A SOVIET SEAMAN BY THE NAME OF MR. MEDVID?

A. YES.

Q. AND WOULD YOU TELL US WHEN THAT WAS?

A. I FIRST WAS INFORMED OF THIS ON OCTOBER 25TH.

Q. AND THAT WAS A FRIDAY?

A. YES.

Q. ALL RIGHT.

AND WHAT TIME ON FRIDAY?

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Q. PROMPTLY AT 3:30 P. M.

Q. AND WERE YOU SUBSEQUENTLY DISPATCHED TO NEW ORLEANS AS A RESULT OF THAT INFORMATION?

A. THAT IS CORRECT.

Q. AND WHEN DID YOU GO TO NEW ORLEANS?

A. SATURDAY, I LEFT WASHINGTON, D. C., APPROXIMATELY AT 8:10 P. M.

Q. ALL RIGHT.

AND WERE YOU DESIGNATED AS A REPRESENTATIVE OF THE INS IN CONNECTION WITH ANY ASPECTS RELATING TO MR. MEDVID, SIR?

A. YES, I WAS.

Q. WHAT WAS YOUR POSITION WITH INS IN CONNECTION WITH MR. MEDVID?

A. I WAS TO GO TO NEW ORLEANS TO LOOK AT TWO THINGS:

NO. 1, TO INITIATE AN INVESTIGATION INTO THE EVENTS PRIOR TO THE 25TH

Q. NOW, I UNDERSTAND YOU WERE NOT DIRECTLY INVOLVED IN THE NEGOTIATIONS WITH REPRESENTATIVES OF THE SOVIET GOVERNMENT; IS THAT CORRECT?

A. THAT IS CORRECT.

Q. DO YOU HAVE ANY KNOWLEDGE OF WHETHER OR NOT ANY REQUEST WAS MADE OF THE CAPTAIN OF THE VESSEL TO TURN OVER MR. MEDVID?

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A. YES, THERE WERE REQUESTS.

Q. AND WHEN WERE THOSE REQUESTS MADE?

A. I THINK THEY WERE INITIATED ON THE EVENING OF THE 25TH. HOWEVER, I WAS NOT PRESENT, AND I DO NOT KNOW THE EXACT TIME.

Q. AND HAVE YOU BEEN INFORMED OF WHAT THE RESPONSE WAS OF THE CAPTAIN OF THE VESSEL INITIALLY?

A. INITIALLY, THEY REFUSED TO ALLOW MR. MEDVID TO COME OFF THE VESSEL.

Q. AND DID THEY ALLOW ANY OFFICIALS OF THE UNITED STATES TO BOARD THE VESSEL?

A. YES, AND WE HAD AGENTS WHO DID BOARD THE VESSEL. HOWEVER, THEY WERE PREVENTED FROM SEEING MR. MEDVID, EXCEPT FOR ONE OR TWO OCCASIONS.

Q. AND HOW MANY PEOPLE WERE ON BOARD THE VESSEL AT THAT TIME?

A. THERE WERE USUALLY FIVE TO SIX ON BOARD.

Q. WAS MR. MEDVID REMOVED FROM THE VESSEL?

A. YES.

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Q. WHEN WAS HE REMOVED FROM THE VESSEL?

A. ON MONDAY AFTERNOON.

Q. AT WHAT TIME WAS HE REMOVED FROM THE VESSEL?

A. APPROXIMATELY 4:30 P. M.

Q. AND TO WHERE WAS HE TAKEN?

A. HE WAS TAKEN TO A COAST GUARD BUOY TENDER WHICH WAS AT ANCHOR JUST ASTERN OF HIS VESSEL.

Q. AND WHAT TIME OF DAY WAS THAT, AGAIN?

A. APPROXIMATELY 4:30 P. M.

Q. AND WHO WAS ON BOARD THE VESSEL?

A. ON THE BUOY TENDER?

Q. YES.

A. THERE WAS, OF COURSE, THE SHIP'S CREW. AS FAR AS THE --

THE COURT: "SHIP'S CREW" MEANING THE BUOY TENDER SHIP'S CREW?

THE WITNESS: YES, SIR.

BY MR. BOMBAUGH:

Q. WERE YOU PRESENT?

A. YES.

Q. AND WERE ANY OTHER OFFICIALS OF THE UNITED STATES GOVERNMENT CHARGED WITH RESPONSIBILITY IN THIS MATTER PRESENT, SIR?

A. YES. THERE WAS A STATE DEPARTMENT OFFICIAL, PLUS WE HAD A DOCTOR AND A PSYCHIATRIST AND AN INTERPRETER.

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Q. ALL RIGHT.

AND WERE THERE ANY REPRESENTATIVES FROM THE SOVIET UNION PRESENT?

A. YES, THERE WERE.

Q. AND HOW MANY REPRESENTATIVES WERE PRESENT?

A. AN EQUAL NUMBER: THERE WERE TWO EMBASSY OFFICIALS, THE SHIP'S CAPTAIN, AND THE SHIP'S DOCTOR.

Q. WERE YOU PHYSICALLY --

THE COURT: JUST A MOMENT. THERE WERE TWO EMBASSY OFFICIALS, THE SHIP'S CAPTAIN AND A SHIP DOCTOR. NOW, THAT IS IT?

THE WITNESS: YES, YOUR HONOR.

THE COURT: FOUR, ALL TOGETHER?

THE WITNESS: YES.

THE COURT: ALL RIGHT.

BY MR. BOMBAUGH:

Q. HOW LONG WAS MR. MEDVID ON THAT VESSEL?

A. APPROXIMATELY FIVE HOURS.

Q. ALL RIGHT.

A. MAYBE A LITTLE OVER FIVE HOURS.

Q. AND COULD YOU DESCRIBE BRIEFLY WHERE HE WAS LOCATED ON THE VESSEL, WHAT TYPE OF ACCOMMODATION?

A. HE WAS IN THE STATEROOM OF THE VESSEL, OR THE LOUNGE, I WOULD DESCRIBE IT AS.

Q. THIS WAS A COMMON AREA, RATHER THAN SLEEPING QUARTERS

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FOR A PARTICULAR PERSON?

A. THAT IS CORRECT, A COMMON AREA.

Q. AND, BRIEFLY, HOW WAS IT FURNISHED?

A. IT HAD A TABLE SIMILAR IN SIZE TO THIS ONE, AND WE, OF COURSE, HAD CHAIRS, NOT QUITE LIKE THIS, BUT SIMILAR TO THIS, TOO. AND IT WAS NEAR THE GALLEY.

Q. AND HOW MANY PEOPLE WERE ACTUALLY IN THE ROOM AT THE TIME YOU WERE THERE?

A. THE PEOPLE I HAVE ALREADY STATED WERE THE ONLY ONES PRESENT. FROM TIME TO TIME, ONE OF THE SHIP'S CREW WOULD COME IN TO SEE IF WE NEEDED ANYTHING.

Q. WOULD YOU DESCRIBE MR. MEDVID'S STATE WHEN HE ARRIVED?

A. HE SEEMED IN GOOD PHYSICAL CONDITION. HE DID HAVE A BANDAGE ON ONE ARM. HE SEEMED SOMEWHAT EMOTIONAL, BUT HIS ANSWERS WERE CLEAR, AND HE SEEMED TO HAVE CONTROL OF ALL OF HIS FACULTIES.

Q. I ASSUME THAT HE SPOKE IN UKRANIAN?

A. YES.

Q. THERE WAS AN INTERPRETER PRESENT?

A. THAT IS CORRECT.

Q. AND WAS HE QUESTIONED BY ONE PERSON OR MORE THAN ONE PERSON?

A. HE WAS QUESTIONED -- THE GROUND RULES WERE THAT THE STATE DEPARTMENT OFFICIAL WOULD BE THE ONLY ONE ON OUR

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SIDE WHO WOULD QUESTION, AND THERE WAS ONE EMBASSY OFFICIAL WHO WAS TO QUESTION ON THEIR SIDE, OR FROM THEIR SIDE.

THE COURT: SOVIETY EMBASSY OFFICIAL?

THE WITNESS: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

BY MR. BOMBAUGH:

Q. I REALIZE THIS WAS THREE OR FOUR HOURS, BUT CAN YOU GIVE US, THE BEST YOU CAN, AN ACCOUNT OF WHAT WAS SAID: WHAT QUESTIONS WERE ASKED OF MR. MEDVID AND WHAT HE SAID AT THAT TIME?

A. YES. THERE WERE A SERIES OF QUESTIONS ASKED AS TO HOW HE -- WHY DID HE LEAVE THE VESSEL? HE RESPONDED TO THOSE: THAT HE WAS AN ELECTRICIAN AND HIS ASSIGNMENT WAS TO -- ON THE VESSEL AT NIGHT WAS TO WALK AROUND THE DECKS TO INSPECT THE LIGHTING.

AND IN THIS ONE AREA HE DISCOVERED THERE WERE SOME PROBLEMS WITH THE LIGHTING. SO HE HAD TO LEAN OVERBOARD TO TRY TO REPAIR IT, OR SEE WHAT THE DAMAGE WAS, AND THAT HE FELL OVERBOARD, AT WHICH TIME HE SWAM ASHORE. AND THAT IS HOW HE GOT ASHORE.

THERE WERE QUESTIONS THAT WERE ASKED AS TO WHETHER OR NOT HE WANTED TO REMAIN IN THE UNITED STATES, AT WHICH TIME HE SAID HE DID NOT WANT TO REMAIN IN THE UNITED STATES.

AND, OF COURSE, THAT IS A VERY KEY QUESTION FOR US.

Q. DID HE GIVE ANY REASON AS TO WHY HE DID NOT WANT

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TO REMAIN IN THE UNITED STATES?

A. NOT AT THIS INTERVIEW.

Q. ALL RIGHT.

A. HE JUST SAID THAT HE DID NOT WANT TO STAY. HE WANTED TO RETURN TO HIS HOME.

Q. DID ANYTHING CHANGE IN MR. MEDVID'S PHYSICAL STATE DURING THE COURSE OF THAT INTERVIEW?

A. YES. INITIALLY, WHEN HE ENTERED THE ROOM, HE HELD HIS STOMACH LIKE THIS, AND HE SAID TO THE INTERPRETER THAT HE WAS NOT FEELING WELL. AND SO EVERYBODY ADJOURNED TO THE DECK WHERE HE HAD SOME FRESH AIR, AND IN A FEW MINUTES SUBSEQUENT TO THAT HE CAME BACK IN AND LAID DOWN.

HE WAS PROVIDED A BUNK ON WHICH TO LAY DOWN, AND HE LAY DOWN FOR APPROXIMATELY 10 OR 15 MINUTES, AT WHICH TIME, THEN, HE SAID HE WAS READY TO RESUME.

SO HE CAME BACK TO THE TABLE WHERE WE DID RESUME THE INTERVIEW.

Q. ALL RIGHT.

AND DO YOU RECALL ANY FURTHER QUESTIONS OR ANSWERS DURING THE PERIOD WHEN HE WAS ON THE VESSEL?

A. THERE WERE SOME QUESTIONS ABOUT HOW LONG HE HAD BEEN A SAILOR; ALSO, WHETHER OR NOT HE HAD TALKED TO AN INTERPRETER; AND A SERIES OF QUESTIONS, AGAIN: DID HE -- WHAT WAS HIS INTENTION IN LEAVING THE VESSEL, THINGS OF THIS NATURE.

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Q. DO YOU RECALL WHAT HIS ANSWERS WERE?

A. HE SAID THAT HE DID NOT RECALL TALKING TO AN INTERPRETER.

Q. YOU HAD A CHANCE TO OBSERVE HIM?

A. YES.

Q. AND I KNOW YOU DO NOT SPEAK UKRANIAN?

A. NO, THAT IS CORRECT.

Q. ALL RIGHT.

THE COURT: HE DOES NOT WHAT? I AM SORRY.

MR. BOMBAUGH: HE DOES NOT SPEAK UKRANIAN.

THE COURT: OH, ALL RIGHT.

BY MR. BOMBAUGH:

Q. BUT, FROM OBSERVING THE MANNER IN WHICH HE DELIVERED HIS ANSEWRS, DID HE APPEAR IRRATIONAL?

A. NO. HE SEEMED IN CONTROL OF HIMSELF WHEN ANSWERING.

Q. DID HE APPEAR SEDATED OR UNDER THE INFLUENCE OF ALCOHOL OR NARCOTICS?

A. NO.

Q. IN YOUR PROFESSIONAL EXPERIENCE, HAVE YOU HAD AN OPPORTUNITY TO OBSERVE PEOPLE UNDER THE INFLUENCE OF NARCOTICS AND ALCOHOL?

A. YES, I HAVE.

Q. DO YOU BELIEVE YOU CAN RECOGNIZE SOMEBODY WHO IS UNDER THE INFLUENCE OF NARCOTICS OR ALCOHOL?

A. I BELIEVE SO, IF IT IS EXTENSIVE.

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Q. NOW, AT SOME TIME MR. MEDVID WAS REMOVED FROM THE VESSEL; IS THAT CORRECT?

A. YES, THAT IS CORRECT.

Q. CAN YOU EXPLAIN FOR THE COURT THE CIRCUMSTANCES OF THE REMOVAL?

A. YES.

AFTER WE HAD COMPLETED THE INTERVIEW, THE U. S. TEAM CONSULTED; AND, IN TURN, THE LEADER OF THE TEAM, THE STATE DEPARTMENT OFFICIAL, CONTACTED WASHINGTON DIRECTLY FROM THE SHIP.

AND IT WAS DECIDED THAT, EVEN THOUGH HE HAD STATED THAT HE DID NOT WANT TO RETURN TO THE UNITED STATES, THAT HE WANTED TO GO HOME, IT WAS FELT THAT WE SHOULD REMOVE HIM TO SHORE, WHERE HE COULD HAVE A COMPLETE PHYSICAL AND A GOOD NIGHT'S SLEEP, AT WHICH TIME HE WOULD THEN BE RE-INTERVIEWED TO SEE IF HIS ANSWERS WOULD CORRESPOND TO WHAT HE PREVIOUSLY GAVE.

Q. AND WAS THIS COMMUNICATED TO THE REPRESENTATIVES OF THE SOVIET UNION WHO WERE PRESENT ON BOARD?

A. YES, IT WAS.

BY MR. BOMBAUGH:

Q. I AM NOT SURE WHETHER I MAY HAVE ASKED THIS QUESTION, BUT BEFORE WE LEAVE THE VESSEL, DID THE ALIEN MENTION HIS PARENTS AT ANY TIME DURING THE COURSE OF THE INTERVIEW?

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A. NOT AT THAT INTERVIEW, NO.

Q. SO YOU REMOVED MR. MEDVID FROM THE VESSEL?

THE COURT: DO I UNDERSTAND YOU REMOVED HIM ALONG WITH THE FOUR RUSSIANS?

THE WITNESS: THAT IS CORRECT, YOUR HONOR.

BY MR. BOMBAUGH:

Q. AND TO WHERE DID YOU MOVE MR. MEDVID?

A. TO A LOCAL NAVAL BASE.

Q. WHAT IS THE NAME OF THE BASE; DO YOU KNOW?

A. I DON'T RECALL THE NAME OF THAT BASE.

Q. WAS IT FAR FROM THE VESSEL?

A. NO, IT WAS IN THE LOCAL AREA.

Q. AND THIS WOULD HAVE BEEN ABOUT EIGHT O'CLOCK IN THE EVENING WHEN YOU REMOVED HIM?

A. NO, ABOUT A QUARTER TO TEN, WHEN WE --

Q. YOU REMOVED HIM AT A QUARTER TO TEN?

A. YES.

Q. ALL RIGHT.

A. THAT IS CORRECT.

Q. AND WHAT HAPPENED THEN, SO FAR AS MR. MEDVID WAS CONCERNED?

A. MR. MEDVID WAS PLACED IN A -- WELL, THEY HAD SECURED A SUITE OF ROOMS IN WHICH OUR PERSONNEL, AS WELL AS THE RUSSIAN PERSONNEL, COULD BED DOWN FOR THE EVENING; AND MR. MEDVID HAD A ROOM TO HIMSELF WHERE HE COULD REST.

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Q. AND HAD HE EATEN ON THE VESSEL?

A. YES.

THE COURT: I AM SORRY. I DID NOT HEAR THE QUESTION.

BY MR. BOMBAUGH:

Q. HAD HE EATEN ON THE VESSEL?

A. YES, HE DID.

Q. DID HE RETIRE FOR THE EVENING IMMEDIATELY UPON ARRIVAL, OR WAS HE SUBJECTED TO ANY ADDITIONAL INTERROGATION?

A. HE WAS GIVEN A THOROUGH PHYSICAL EXAMINATION AT THAT TIME, UPON ARRIVAL.

Q. BY WHOSE DOCTOR?

A. BY OUR DOCTOR.

Q. ALL RIGHT.

A. HE WAS ALSO OBSERVED DURING THIS TIME BY OUR PSYCHIATRIST, ALSO.

Q. AND DID HE RETIRE THAT EVENING? DO YOU KNOW WHAT TIME HE RETIRED?

A. YES. I DO NOT KNOW THE EXACT TIME, BECAUSE I STAYED OFFBASE THAT NIGHT. SO I WAS NOT PRESENT ALL EVENING, SIR.

Q. WHEN DID YOU RETURN THE NEXT DAY?

A. AT APPROXIMATELY NINE A. M., IN THE MORNING.

Q. AND WHERE WAS MR. MEDVID WHEN YOU RETURNED?

A. HE WAS IN HIS ROOM.

Q. WAS HE ALONE, OR WAS HE WITH SOMEBODY?

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Q. HE WAS WITH A RUSSIAN OFFICIAL, THE EMBASSY OFFICIALS, I BELIEVE ONE OF THE -- ANYWAY, ONE OF THE RUSSIAN PEOPLE, AS WELL AS ONE OF OUR PEOPLE, AND HE WAS WATCHING TV.

Q. HAD HE ALREADY HAD BREAKFAST?

A. YES.

Q. DID A MEETING WITH MR. MEDVID AND ALL OF THE PEOPLE PRESENT RESUME?

A. NOT IMMEDIATELY. HE WAS ASKED TO HAVE A PSYCHIATRIC EXAMINATION AT THAT TIME, AND THAT TOOK PLACE. HOWEVER, IT WAS SOON INTERRUPTED WHEN HE REFUSED TO GO THROUGH WITH THIS.

THE COURT: WHOSE PSYCHIATRIST'S EXAMINATION, A U. S. PSYCHIATRIST'S EXAMINATION?

THE WITNESS: YES, A U. S. PSYCHIATRIST'S EXAMINATION, YOUR HONOR.

THE COURT: ALL RIGHT.

BY MR. BOMBAUGH:

Q. AND WAS THAT DISCONTINUED WHEN HE OBJECTED?

A. YES, EVENTUALLY IT WAS TERMINATED. THEY DID ATTEMPT TO HAVE HIM GO BACK AND COMPLETE IT. HOWEVER, IT WENT TO THE POINT WHERE ALL HE WOULD ANSWER WAS "NO" TO EVERY QUESTION. SO THEY EVENTUALLY TERMINATED THAT WITHIN A SHORT PERIOD OF TIME.

THE COURT: WAS HE ALONE WITH THE DOCTOR?

THE WITNESS: THERE WERE THE SHIP'S DOCTOR AND

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THE PSYCHIATRIST, AND I BELIEVE THERE WAS ONE OTHER PERSON IN THERE. HOWEVER, I AM --

THE COURT: THE SHIP'S DOCTOR WAS THE RUSSIAN SHIP'S DOCTOR.

THE WITNESS: THE RUSSIAN SHIP'S DOCTOR, YES.

THE COURT: ALL RIGHT.

BY MR. BOMBAUGH:

Q. WAS THAT PART OF THE TERMS OF THE SOVIET UNION: THAT REPRESENTATIVES OF BOTH SIDES BE PRESENT AT ALL TIMES?

A. I BELIEVE SO. I DID NOT KNOW THE EXACT GROUND RULES.

Q. BUT, AT LEAST FROM YOUR OBSERVATION, REPRESENTATIVES OF BOTH SIDES WERE PRESENT AT ALL TIMES?

A. YES, TRAT IS CORRECT.

Q. AND WAS THERE FURTHER QUESTIONING OF MR. MEDVID CONCERNING HIS DESIRE TO STAY IN THE UNITED STATES OR RETURN TO THE SOVIET UNION?

A. YES.

AT APPROXIMATELY ELEVEN A. M., WE RESUMED THE INTERVIEW, OR WE CONDUCTED ANOTHER INTERVIEW, ASKING VERY SIMILAR QUESTIONS AS TO WHAT WE DID PREVIOUSLY.

THE COURT: WHAT TIME WAS THAT?

THE WITNESS: APPROXIMATELY ELEVEN A. M., IN THE MORNING.

THE COURT: ALL RIGHT.

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BY MR. BOMBAUGH:

Q. AND WOULD YOU --

THE COURT: OF TUESDAY?

THE WITNESS: YES, YOUR HONOR.

THE COURT: EXCUSE ME.

BY MR. BOMBAUGH:

Q. WOULD YOU DESCRIBE GENERALLY HOW HE APPEARED PHYSICALLY, HIS STATE?

A. HE APPEARED RESTED, OR RESTFUL. HE APPEARED TO BE MORE BELLIGERENT TOWARDS US THAN HE HAD PREVIOUSLY BEEN.

Q. DID HE EXPRESS IMPATIENCE?

A. YES, HE DID. HE WAS SORT OF RAMBUNCTIOUS.

Q. WHAT WAS HIS REQUEST?

A. HE IMMEDIATELY SAID THAT HE WANTED TO RETURN HOME TO HIS MOTHER AND FATHER, AND HE SAID THIS ON FOUR SEPARATE OCCASIONS, WITH QUITE A BIT OF VEHEMENCE.

Q. DID HE SAY ANYTHING ELSE THAT YOU RECALL?

A. NO. THAT WAS THE MOST VIVID OF HIS DESIRES AT THAT TIME.

Q. ALL RIGHT.

HOW LONG DID THAT INTERROGATION TAKE PLACE?

A. PROBABLY NOT OVER 20 MINUTES, AT WHICH TIME HE WAS PRESENTED A STATEMENT IN RUSSIAN BY THE STATE DEPARTMENT OFFICIAL. IN ESSENCE, IT WAS A REQUEST THAT HE BE ALLOWED TO RETURN HOME, AND THAT HE WAS DOING THIS VOLUNTARILY,

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AND THAT THAT WAS HIS DESIRE.

Q. AND DID HE REVIEW THAT STATEMENT?

A. YES. HE REVIEWED IT, AND ALL OF THE RUSSIAN OFFICIALS REVIEWED IT.

Q. DID HE PERSONALLY MAKE ANY CHANGES IN IT?

A. YES, HE TOOK ISSUE WITH A LOT OF DIFFERENT PARTS OF IT WHICH -- IT BECAME QUITE APPARENT THAT THE RUSSIAN OFFICIALS WERE SOMEWHAT EMBARRASSED BY WHAT HE WAS DOING. IN ESSENSE, IT LOOKED LIKE HE WAS EXERTING HIMSELF AT THAT TIME.

HOWEVER, THE SUBSTANCE OF THE -- OF HIS CHANGES SEEMED TO BE VERY MINUTE. THEY WERE JUST SMALL THINGS. THERE WAS QUITE A SERIES OF QUESTIONS BACK AND FORTH BETWEEN THE INTERPRETER AND THE STATE DEPARTMENT OFFICIAL AND THE RUSSIAN OFFICIAL, ET CETERA.

Q. IN YOUR PRESENCE, DID HE EVER AT ANY TIME SAY THAT HE DID NOT WANT TO GO BACK TO THE VESSEL OR TO THE SOVIET UNION?

A. NO, HE DID NOT. HE NEVER MADE THAT CLAIM IN MY PRESENCE.

Q. DID HE EVER SAY THAT HE WANTED TO APPLY FOR POLITICAL ASYLUM?

A. NO. OF COURSE, I AM RELYING ON THE INTERPRETER.

THE COURT: THE INTERPRETER NEVER SAID THAT.

THE WITNESS: THAT IS RIGHT.

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THE COURT: WAS HE ASKED THAT QUESTION DIRECTLY?

THE WITNESS: YES, YOUR HONOR, SEVERAL TIMES. THE STATE DEPARTMENT OFFICIAL WENT TO GREAT LENGTHS TO ASSURE MR. MEDVID THAT IF HE WANTED OR DESIRED TO STAY IN THE UNITED STATES, THAT HE COULD DO SO, FREE OF BEING IMPRISONED, AND THAT HE COULD INSURE THAT HE WOULD HAVE HIS FREEDOM HERE.

HE DID THIS ON, I AM SURE, HALF A DOZEN OCCASIONS TO ASSURE HIM THAT, IF HE WANTED TO, HE COULD MAKE THAT REQUEST.

THE COURT: ALL RIGHT.

BY MR. BOMBAUGH:

Q. IN YOUR OPINION, DID MR. MEDVID ANSWER FREELY OR DID HE ANSWER UNDER COMPULSION?

A. I THINK HE ANSWERED FREELY.

Q. AND WHEN -- HOW LONG -- AT SOME POINT A DECISION WAS MADE AS TO WHAT TO DO WITH MR. MEDVID. WHAT TIME OF THE DAY WAS THAT?

A. THAT WAS SHORTLY AFTER OUR INTERVIEW. I WOULD SAY IT WAS SOMEWHERE AROUND --

THE COURT: I AM SORRY. WHAT DECISION ARE YOU TALKING ABOUT?

MR. BOMBAUGH: THE DECISION AS TO WHAT TO DO WITH MR. MEDVID ON TUESDAY. THIS ALL OCCURRED ON TUESDAY.

THE COURT: ALL RIGHT. GIVE ME THE PLAYERS TO THAT: THE DECISION MADE BY WHOM?

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MR. BOMBAUGH: I WAS GOING TO START WITH THE TIME, YOUR HONOR.

THE COURT: THE TIME. OKAY.

BY MR. BOMBAUGH:

Q. FIRST, WAS A DECISION MADE?

THE COURT: GO AHEAD.

THE WITNESS: YES.

THE COURT: THANK YOU.

BY MR. BOMBAUGH:

Q. AND ABOUT WHAT TIME OF THE DAY WAS IT MADE?

A. APPROXIMATELY 2:00 P. M.

Q. AND ON BEHALF OF THE UNITED STATES, WHO PARTICIPATED IN THAT DECISION?

THE COURT: THIS IS 2:00 P. M. ON TUESDAY?

BY MR. BOMBAUGH:

Q. TUESDAY?

A. YES. I AM NOT EXACT ON THE TIME, BUT IT IS CLOSE TO THAT TIME.

THE COURT: YES.

BY MR. BOMBAUGH:

Q. ALL RIGHT.

A. THERE WERE A GREAT DEAL OF PLAYERS THAT PARTICIPATED IN THIS, AND I DO NOT KNOW PROBABLY ALL OF THEM

Q. ALL RIGHT. I AM JUST TALKING ABOUT AT THE SCENE, NOT WHO MAY HAVE BEEN -- FIRST OF ALL, DID YOU CAUCUS AMONG

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YCURSELVES?

A. YES, WE DID.

Q. OUTSIDE OF THE PRESENCE OF THE SOVIET OFFICIALS?

A. YES, THAT IS CORRECT.

Q. OUTSIDE OF MR. MEDVID'S PRESENCE?

A. YES.

Q. AND WITHOUT GETTING INTO ALL OF THE PLAYERS, LET ME ASK YOU THIS: DID YOU GET ANY ADVICE FROM THE DOCTOR WITH RESPECT TO MR. MEDVID'S PHYSICAL CONDITION?

A. YES, BOTH THE DOCTOR AND THE PSYCHIATRIST.

Q. AND WHAT DID THEY ADVISE? WHAT WAS THEIR OPINION WITH RESPECT TO THE PHYSICAL AND MENTAL CONDITION OF MR. MEDVID?

A. THEY FELT THAT HE WAS CAPABLE OF MAKING A DECISION, CAPABLE OF MAKING A CHOICE, AND THAT HIS MENTAL AND PHYSICAL WELL BEING WAS SUCH THAT HE COULD DO THAT.

Q. AND THAT IS TRUE OF BOTH?

A. YES.

Q. DID THEY EXPRESS ANY RESERVATIONS?

A. NO, THEY DID NOT. THERE WAS A LOT OF DISCUSSION AS TO THE -- WHAT THE PSYCHIATRIST THOUGHT, SINCE HE COULD NOT FINISH HIS EXAMINATION, AND THERE WAS SOME SPECULATION THAT HE MAY HAVE SOME DEFICIENCIES. HOWEVER, NOTHING MAJOR, SIR.

Q. ALL RIGHT. AND I TAKE IT THAT A DECISION WAS

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MADE TO ALLOW MR. MEDVID TO LEAVE, IS THAT CORRECT?

A. THAT IS CORRECT.

Q. AND THAT DECISION WAS CONVEYED TO MR. MEDVID; WAS IT?

A. YES, THAT IS CORRECT.

Q. WERE YOU PRESENT WHEN HE WAS TOLD?

A. YES.

Q. WAS HE VISIBLY UPSET?

A. NO, HE WAS NOT.

Q. DID HE SEEM RELIEVED?

A. YES.

THE COURT: SEEM WHAT?

BY MR. BOMBAUGH:

Q. RELIEVED?

A. IN FACT, I BELIEVE HE SAID, "OKAY," IN ENGLISH. HE HAD USED THE WORD "OKAY" SEVERAL TIMES THAT DAY, WHETHER HE JUST ACQUIRED THAT OR KNEW IT, OR WHATEVER THE CIRCUMSTANCES.

Q. AND DID HE AND THE SOVIETS THEN RETURN TO THE VESSEL?

A. YES.

Q. AND DO YOU KNOW ABOUT WHAT TIME THIS WAS? AT WHAT TIME ON TUESDAY WS HE RETURNED TO THE VESSEL?

A. PROBABLY SOMETIME AFTER 4:30. I DON'T KNOW EXACTLY WHEN.

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MR. BOMBAUGH: YOUR HONOR, I THINK THAT IS ALL THE EVIDENCE I HAVE TO PROFFER WITH THIS WITNESS.

THE COURT: ALL RIGHT. ALL RIGHT. LET ME JUST ASK YOU THIS:

IS THERE ANY REASON WHY THERE CAN'T BE ADDUCED IN OPEN COURT THIS WITNESS' TESTIMONY AS TO THE TWO INTERVIEWS, WITHOUT ANY PREDICATE AS TO WHAT PRECEDED OR FOLLOWED THEM AND HOW THEY WERE ARRANGED, AS TO WHO SAID WHAT TO WHOM?

MR. BOMBAUGH: I AM A LITTLE CONCERNED ABOUT GETTING INTO EXTENSIVE CROSS-EXAMINATION.

MAY I SHOW YOU WHAT HAS BEEN MADE PUBLICLY AVAILABLE, YOUR HONOR, CONCERNING THAT?

THE COURT: SURELY.

WELL, I SEE. THAT IS THE GENERAL OUTLINE.

MR. BOMBAUGH: MY CONCERN, YOUR HONOR, IS THAT THE STATE DEPARTMENT WAS VERY RELUCTANT TO HAVE MR. BRANDEMUEHL TESTIFY EVEN IN CAMERA.

THE COURT: I UNDERSTAND THAT.

MR. BOMBAUGH: I DON'T KNOW ALL OF THE REASONS OR THE RAMIFICATIONS, BUT I HAVE STRONG SUSPICIONS THAT A PART OF IT IS, I CAN TELL YOU, THAT THE NEGOTIATIONS OF THE GROUND RULES WERE NEGOTIATED AT THE HIGHEST LEVELS.

THEY WERE OF GREAT SENSITIVITY, AND THE QUESTION WITH RESPECT TO CONFIDENTIALITY AND RELEASE OF INFORMATION, I HAVE NO ABILITY TO ASSURE YOUR HONOR ONE WAY OR THE OTHER.

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BUT I DO KNOW THAT THE ISSUANCE OF A STATEMENT OF THIS KIND WAS VERY CAREFULLY DONE, WITH VERY CAREFUL CLEARANCE.

AND CERTAINLY NOBODY HERE REPRESENTING THE GOVERNMENT IS IN A POSITION TO MONITOR OR APPROVE THAT KIND OF RELEASE. I FRANKLY DO NOT BELIEVE THAT IF WE GET INTO THE SUBSTANCE OF THESE MEETINGS AND WHAT OCCURRED WITH THE PEOPLE PRESENT, THAT WE CAN AVOID GETTING INTO AREAS WHICH WOULD CAUSE UNDUE DAMAGE TO RELATIONS.

I CAN'T SAY THAT ACTUALLY, YOUR HONOR, BUT I KNOW, BECAUSE I HAVE BEEN INVOLVED IN THIS NOW FOR THE LAST TWO DAYS, THAT THE STATE DEPARTMENT IS VERY, VERY CONCERNED.

THE COURT: WELL, LET ME ASK YOU THIS:

COULD THE WITNESS MAKE THAT STATEMENT IN AN AFFIDAVIT?

MR. BOMBAUGH: MAYBE WE OUGHT TO ASK THE WITNESS TO READ IT. I THINK THERE ARE SOME MINOR DETAILS. WOULD YOU READ THIS?

THE COURT: THAT STATEMENT DOES NOT SAY, FOR EXAMPLE, THAT HE WAS ASKED SIX TIMES -- THAT HE WAS TOLD SIX TIMES HE COULD STAY IN THE UNITED STATES WITHOUT GOING TO PRISON.

THE WITNESS: MAY I CLARIFY?

THE COURT: CERTAINLY.

THE WITNESS: I THINK HE WAS ASSURED APPROXIMATELY SIX TIMES THAT HE COULD STAY, IF HE WANTED TO. HOWEVER, WHEN IT CAME TO THE QUESTION, THEN, AFTER THOSE ASSURANCES,

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THE STATE DEPARTMENT OFFICIAL WOULD ASK:

DO YOU WANT TO REMAIN IN THE UNITED STATES?

SO IT WAS SORT OF A PREPARING BEFORE THAT QUESTION.

THE COURT: YES.

MR. BOMBAUGH: THE PROBLEM I HAVE IS THE LIMITATION OF THE SCOPE OF THE CROSS-EXAMINATION. IF I PUT THE WITNESS ON IN THE COURTROOM, WE HAVE NO PROBLEM DISCLOSING --

THE COURT: I DON'T MIND HAVING THE CROSS-EXAMINATION IN HERE IF YOU WANT TO DO THAT.

MR. BOMBAUGH: I MEAN ANYTHING THAT A PLAINTIFF'S LAWYER LEARNS IS GOING TO BE FAIR GAME, I AM AFRAID. I HAVE BEEN ON THE SAME SIDE OF THE AISLE LITIGATING WITH THIS GROUP, AND THEY HAVE VERY STRONG CONVICTIONS.

I WOULD NOT BE COMFORTABLE WITH THAT ARRANGEMENT, YOUR HONOR.

CAN THE WITNESS FINISH WITH THE STATEMENT?

THE COURT: OF COURSE. WHAT IS YOUR REGULATION NUMBER AGAIN THAT SUBSECTION (J) IS PART OF?

MR. BOMBAUGH: WHICH REGULATION, YOUR HONOR, ARE WE TALKING ABOUT?

THE COURT: THAT'S ALL RIGHT. I HAVE IT.

THE WITNESS: I HAVE READ IT.

THE COURT: ALL RIGHT.

THE WITNESS: YES, THAT IS AS I REMEMBER THE SEQUENCE THERE.

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THE COURT: ALL RIGHT. NOW, LET ME JUST ASK A QUESTION HERE. YOU WERE PRESENT AT THE TIMES WHEN MR. MEDVID WAS INTERVIEWED?

THE WITNESS: YES, YOUR HONOR.

THE COURT: AND YOU HAVE HAD EXPERIENCE WITH ASYLUM MATTERS, ASYLUM HEARINGS?

THE WITNESS: I HAVE NEVER CONDUCTED AN ASYLUM HEARING, YOUR HONOR.

THE COURT: HAVE YOU EVER WITNESSED ANY?

THE WITNESS: NO. HOWEVER, I HAVE BEEN PRESENT AT THE RECENT RUSSIAN CASE HERE IN WASHINGTON OF THE YOUNG BOY WHO WANTED TO STAY. I WAS INVOLVED IN THAT CASE.

THE COURT: ALL RIGHT.

THE WITNESS: HOWEVER, I WAS NOT PRESENT AT THE INTERVIEW AT THAT TIME.

THE COURT: ALL RIGHT. LET ME ASK YOU THIS:

HAVE YOU HAD ANY EXPERIENCE GENERALLY AND ENOUGH OPPORTUNITY TO OBSERVE THIS MATTER TO FORM AN OPINION AS TO WHETHER THIS ALIEN IS DEPARTING OR SEEKING TO DEPART THE UNITED STATES VOLUNTARILY?

THE WITNESS: YES, I THINK --

THE COURT: NOW, JUST ANSWER:

HAVE YOU FORMED AN OPINION?

THE WITNESS: YES.

THE COURT: AND WHAT IS YOUR OPINION?

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THE WITNESS: MY OPINION, AT THE TIMES I WAS PRESENT, IS THAT HE HAD DECIDED, OR HAD MADE THE CHOICE, TO RETURN TO HIS HOMELAND.

THE COURT: ALL RIGHT.

NOW, IS THERE ANY REASON WHY HE CAN'T BE EXAMINED ON THAT BASIS?

WELL, LET ME ASK YOU THIS: WHAT IS THE BASIS OF YOUR OPINION?

THE WITNESS: COULD I HAVE A MOMENT WITH MY COUNSEL, YOUR HONOR?

THE COURT: OF COURSE. DO YOU WANT TO EXCUSE YOURSELF?

MR. BOMBAUGH: WELL, MAYBE I CAN CLARIFY IT, YOUR HONOR.

IS YOUR OPINION BASED ON YOUR OBSERVATIONS OF MR. MEDVID?

THE WITNESS: YES.

MR. BOMBAUGH: IS IT BASED ON YOUR EXPERIENCE AS A BORDER PATROL OFFICER?

THE WITNESS: TRUE. YES.

MR. BOMBAUGH: HOW LONG HAVE YOU BEEN A BORDER PATROL OFFICER?

THE WITNESS: I HAVE BEEN IN THE IMMIGRATION SERVICE 29 YEARS.

MR. BOMBAUGH: THAT'S IT, YOUR HONOR.

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THE COURT: WAS THERE ANYTHING ABOUT THIS PERSON'S PHYSICAL CONDITION, AS YOU OBSERVED IT, OR HIS MENTAL APPEARANCE, THAT CREATED A DOUBT IN YOUR MIND AS TO WHETHER HE WAS SEEKING VOLUNTARILY TO DEPART?

THE WITNESS: I HAD A MORAL PROBLEM, BASED ON THE SEQUENCE THAT TOOK PLACE PRIOR TO MY ENTERING THIS CASE. HOWEVER, AFTER CONSULTING WITH THE DOCTOR AND THE PSYCHIATRIST AND THE OTHER MEMBER OF THE PANEL, I FELT, PERSONALLY, THAT HE WAS CAPABLE OF MAKING A DECISION. I THOUGHT THAT HE WAS, AGAIN, CAPABLE OF MAKING A REASONABLE CHOICE.

AND I KNEW THAT THE GOVERNMENT HAD GONE THE EXTRA MILE. WE SECURED A NEUTRAL SITE ON THE BUOY TENDER, AT WHICH TIME HE WAS INTERVIEWED, AND AT WHICH TIME HE SAID HE WANTED TO RETURN TO HIS HOME.

WE WENT ANOTHER STEP AND REMOVED HIM, BECAUSE, AGAIN, THE U. S. DELEGATION WANTED TO BE CERTAIN OF AT LEAST TWO THINGS.

NO. 1, WE WANTED TO HAVE THAT PHYSICAL EXAMINATION.

WE ALSO WANTED TO GIVE HIM SOME REST, BECAUSE THERE IS NO DOUBT IT WAS AN EMOTIONAL SITUATION FOR HIM.

WE JUST WANTED TO BE SURE.

HE DID SHOW A LITTLE IMMATURITY, AND WE JUST WANTED TO MAKE SURE THAT HE WAS GIVEN EVERY OPPORTUNITY TO BE PLACED IN A SETTING WHERE HE WOULD KNOW THAT IF HE SAID HE WANTED TO STAY HERE, THAT HE COULD DO SO WITHOUT FEAR OF REPRISAL

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FROM THE RUSSIANS.

THE COURT: SO THE ANSWER TO THE QUESTION, STATED DIFFERENTLY, IS THIS.

YOU HAD A DOUBT BEFORE THIS PROCESS?

THE WITNESS: YES.

THE COURT: AND THE PROCESS HAD WHAT EFFECT ON THE DOUBT?

THE WITNESS: IT REMOVED THE DOUBT. I REALIZED THAT HE WAS MAKING A DECISION THAT HE WANTED TO RETURN HOME, YOUR HONOR.

THE COURT: ALL RIGHT. OKAY.

NOW, I AM GOING TO GIVE YOU ALL 15 MINUTES OR SO TO CONSIDER FURTHER WHETHER, AND, IF SO, HOW, YOU CAN ADDUCE TESTIMONY IN OPEN COURT, SUBJECT TO CROSS-EXAMINATION WHICH I WILL POLICE -- AND I WILL ADJOURN BEFORE I OVERRULE ANY OBJECTION THAT YOU MAKE AND GIVE YOU A CONFERENCE N IT -- ON THE QUESTION OF WHETHER ANY DOUBT THAT HE HAD WAS DISSIPATED BY THIS PROCESS.

MR. BOMBAUGH: CAN WE DISCUSS GROUND RULES SO THAT I CAN CONVEY THEM? I DO NOT WANT TO ELICIT, NOR HAVE SUBJECT TO CROSS-EXAMINATION, THE AGREEMENTS WITH RESPECT TO THE GROUND RULES.

THE COURT: I UNDERSTAND THAT.

MR. BOMBAUGH: OR ANY OF THE DEALINGS WITH THE SOVIET GOVERNMENT. I AM PREPARED TO ACKNOWLEDGE THEIR

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PRESENCE, BUT --

THE COURT: THAT IS FINE.

MR. BOMBAUCH: (CONTINUING) -- BUT, AS FAR AS ACKNOWLEDGING THE PRESENCE OF THE SOVIETS THERE -- AND WE DO CONCEDE THAT HE WAS ALWAYS INTERROGATED IN JOINT CUSTODY.

THE COURT: OF COURSE.

MR. BOMBAUGH: BUT THAT IS ALL I WANT TO SAY ABOUT THE SOVIETS.

THE COURT: WILL YOU IDENTIFY THE FACT THAT THERE WAS A DOCTOR AND A PSYCHIATRIST?

MR. BOMBAUGH: THAT IS WHAT I AM GOING TO PROPOSE, WHEN I GO BACK AND MAKE A 'PHONE CALL TO SEEK AUTHORITY.

THE COURT: WHAT I AM LOOKING FOR HERE: IT SEEMS TO ME UNDER THE OVERTON PARK CONCEPT THAT I AM ENTITLED TO HAVE WHAT I GOT: TESTIMONY OF THE HEAD OF THE -- EQUIVALENT TO THE HEAD OF THE DEPARTMENT, THE RESPONSIBLE OFFICIAL.

MR. BOMBAUGH: YOUR HONOR, IF MR. MEDVID HAD BROUGHT THIS LAWSUIT, OR SOMEBODY AUTHORIZED ON HIS BEHALF, I WOULD HAVE TO AGREE WITH YOU.

BECAUSE IT IS CLEAR THAT AN ASYLUM APPLICANT HAS A RIGHT NOT ONLY TO AN ADMINISTRATIVE DETERMINATION, BUT TO JUDICIAL REVIEW. BUT THIS IS NOT MR. MEDVID WHO IS BRINGING THIS ACTION.

THE COURT: I UNDERSTAND THAT IS YOUR POSITION, BUT THERE IS A THEORY -- WE CAN WORRY ABOUT THAT LATER,

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BUT IT SEEMS TO ME THAT THE COURT OF APPEALS IS GOING TO GET THIS ONE WAY OR ANOTHER. I AM A HEARING EXAMINER IN A WAY, AND I AM -- AND I THINK THAT THERE IS TESTIMONY HERE THAT THEY ARE ENTITLED TO MAKE UP THEIR MIND WITHOUT HAVING TO DEAL WITH A RAW JURISDICTIONAL QUESTION.

MR. BOMBAUGH: I HAVE TO DISAGREE WITH YOUR HONOR, AND I ALSO POINT OUT TO YOU THAT WHILE THERE IS A COURT OF APPEALS -- THERE WAS A HEARING YESTERDAY, STARTED THE DAY BEFORE YESTERDAY --

THE COURT: I UNDERSTAND THAT.

MR. BOMBAUGH: (CONTINUING) -- AND I DO WANT YOU TO KNOW THAT WE WERE NOTIFIED THAT THEY WERE GOING TO THE COURT OF APPEALS IN PHILADELPHIA.

THEY DID NOT GO TO THE COURT OF APPEALS IN PHILADELPHIA I GOT NO SUCH NOTICE, AND I REALLY THINK THAT THIS IS JUST A BLATANT ATTEMPT AT FORUM SHOPPING.

THE COURT: THEY GOT ME AS AN EMERGENCY JUDGE ON A FRIDAY AFTERNOON.

MR. BOMBAUGH: I AM NOT TALKING ABOUT YOU, YOUR HONOR. I AM TALKING ABOUT THE DISTRICT. OBVIOUSLY, PHILADELPH HAD NOTHING TO DO WITH IT, AND IT SEEMS TO ME, FROM A JURISDICTIONAL AND DUE PROCESS STANDPOINT, THAT THERE ARE SOME INDISPENSABLE PARTIES TO THIS DISPUTE, IF THERE IS TO BE A JURISDICTIONAL DETERMINATION.

AND THAT IS THE CUSTODIAN OF THE VESSEL AND THE

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CUSTODIAN OF MR. MEDVID AND MR. MEDVID.

THE ONLY JURISDICTION IN THE FEDERAL JUDICIARY THAT HAS ANY ABILITY TO BRING THEM IN AT ALL IS THE COURT IN NEW ORLEANS.

THE COURT: JUST TO TALK ABOUT THAT, IF YOU WANT TO GET TO THAT, THERE IS AUTHORITY IN THE DEFENDANTS HERE TO DETAIN AN INDIVIDUAL.

NOW, HOW YOU ENFORCE IT IS SOMETHING ELSE.

MR. BOMBAUGH: BUT YOU ARE TALKING ABOUT AUTHORITY. THIS IS NOT A HABEAS. THIS IS A REVERSE HABEAS WE ARE, IN EFFECT, BEING ASKED TO SHOW CAUSE WHY WE SHOULD NOT ARREST AN INDIVIDUAL WHO HAS TOLD US, AS YOUR HONOR HAS HEARD, THAT HE DOES NOT WANT TO STAY HERE.

THE COURT: I UNDERSTAND THAT. YOU HAVE A LOP-SIDED RECORD RIGHT NOW, AND I AM REALLY OFFERING YOU AN OPPORTUNITY TO BALANCE IT SO THAT THE COURT OF APPEALS CAN HAVE AS EASY A TIME AS YOU SAY THAT THEY SHOULD HAVE.

MR. BOMBAUGH: WELL, I WILL HAVE TO CONSULT, YOUR HONOR.

THE COURT: I WISH YOU WOULD.

MR. BOMBAUGH: THANK YOU.

(WHEREUPON, A BRIEF RECESS WAS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD IN CHAMBERS:)

MR. BOMBAUGH: YOUR HONOR, FOR THE RECORD, I HAVE CONSULTED WITH MY SUPERVISORS IN THE DEPARTMENT OF JUSTICE.

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I HAVE CONSULTED WITH THE APPROPRIATE OFFICIALS IN THE DEPARTMENT OF JUSTICE.

THE RESULT OF THOSE CONSULTATIONS IS I HAVE BEEN INSTRUCTED TO ADVISE THE COURT THAT MR. BRANDEMUEHL HAS BEEN INSTRUCTED NOT TO TESTIFY IN OPEN COURT; AND, IF CALLED TO TESTIFY, TO RELY ON THE FAMOUS CASE OF TUOHEY VERSUS REAGAN.

THE COURT: WHICH I HAVE NOT BEEN ABLE TO FIND.

MR. BOMBAUGH: I THINK, YOUR HONOR, IT IS FAIR TO SAY THAT THIS IS NOT BECAUSE WE ARE ASHAMED OF ANYTHING THAT MR. BRANDEMUEHL HAS TO SAY. I THINK THE EFFORTS THAT WERE TAKEN AFTER THE INITIAL EVENTS ON BEHALF OF THIS SOVIET SEAMAN CERTAINLY REFLECT WELL ON THE GOVERNMENT OF THE UNITED STATES.

THE COURT: AND I AGREE WITH THAT.

MR. BOMBAUGH: I WOULD BE DELIGHTED IF I WERE IN A POSITION TO PUT THAT ON IN OPEN COURT SUBJECT TO CROSS-EXAMINATION, BECAUSE I AM ASHAMED OF NOTHING THAT WAS DONE.

THEREFORE, WE WILL NOT PUT THAT ON THE OPEN RECORD.

WE WOULD BE PREPARED, YOUR HONOR, IF IT IS OF ANY ASSISTANCE, TO TAKE THE PRESS RELEASE THAT HAS ALREADY

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BEEN TENDERED IN PUBLIC AND TO HAVE MR. BRANDEMUEHL SWEAR TO THE TRUTH OF THAT, SUBJECT TO TWO RESERVATIONS:

ONE, THAT WE NOT WAIVE OUR RIGHT NOT TO PRODUCE HIM FOR CROSS-EXAMINATION; AND, TWO, THAT -- I GUESS THAT IS BASICALLY IT.

THE COURT: ALL RIGHT.

NOW, WHAT I WAS PREPARING TO DO WAS TO SAY -- I CERTAINLY HAD THAT IMPRESSION. I DON'T KNOW WHETHER THE RECORD FORMALLY CONFIRMED IT, BUT I WAS PREPARED TO SAY THAT IN THE CIRCUMSTANCES, CONSIDERING THE FOREIGN POLICY IMPLICATIONS OF THIS CASE, I RECEIVED TESTIMONY FROM MR. BRANDEMUEHL IN CAMERA

THAT HE DESCRIBED IN GREATER DETAIL THAN THE DOCUMENT THAT YOU FURNISHED ME THE CIRCUMSTANCES THERE RELATED AND CONFIRMED THEM UNDER OATH; AND THAT, IN RESPONSE TO A QUESTION AS TO WHETHER HE HAD ENTERTAINED DOUBT AS TO WHETHER MR. MEDVID WAS DEPARTING THE UNITED STATES VOLUNTARILY, HE HAD FORMED AN OPINION THAT, ALTHOUGH AT ONE TIME BEFORE HE WAS IN NEW ORLEANS HE HAD SUCH A DOUBT, THAT HIS INFORMED AND EXPERIENCED OBSERVATION OF THE PROCEEDINGS THERE RESOLVED THE DOUBT.

AND ON THE BASIS OF THAT IN CAMERA TESTIMONY, I WAS PERSUADED, AND I AM PERSUADED, THAT THE DECISION THAT THERE WAS NO DOUBT ABOUT THE VOLUNTARINESS OF MR. MEDVID'S DEPARTURE -- I WAS NOT PERSUADED THAT THAT CONCLUSION THAT

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HE DEPARTED VOLUNTARILY AND THAT THERE WAS NO DOUBT ABOUT HIS DEPARTING VOLUNTARILY -- I WAS NOT PERSUADED THAT THAT CONCLUSION WAS ARBITRARY AND CAPRICIOUS.

NOW, I DON'T WANT TO RAM THAT DOWN YOUR THROAT, AND YOU UNDERSTAND THIS TESTIMONY IS ALL UNDER SEAL. BUT THAT IS WHAT I AM CONCLUDING.

NOW, HOW I RECORD THAT, I AM VERY, VERY SENSITIVE TO THE FOREIGN POLICY CONCERNS OF THE UNITED STATES, AND I AM NOT ABOUT TO --

MR. BOMBAUGH: YOU DID NOT SAY ANYTHING THAT I HAVE A PROBLEM WITH. I DON'T WANT TO GET HIM TESTIFYING, BECAUSE I CAN'T LET HIM TESTIFY.

BUT IF YOU MAKE THOSE STATEMENTS AS YOU JUST DID ON THE RECORD, AND YOU ARE ASKING: DO WE HAVE AN OBJECTION -

THE COURT: WELL, I DON'T CARE ABOUT AN OBJECTION.

MR. BOMBAUGH: A PROBLEM --

THE COURT: I AM ASKING WHETHER YOU, THE UNITED STATES IN ITS SOVEREIGNTY, WOULD BE EMBARRASSED BY MY DOING THAT?

MR. BOMBAUGH: NOTHING THAT YOU SAID WOULD EMBARRASS US. I WOULD LIKE TO PERSUADE YOU TO ADD A LITTLE PROVISION AFTERWARDS:

AND, IN ADDITION, THE GOVERNMENT'S POSITION WITH RESPECT TO STANDING AND JURISDICTION IS WELL TAKEN.

THE COURT: LET THE RECORD SHOW THAT THE COURT

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MADE A GESTURE IN THE NEGATIVE.

THE COURT: ALL RIGHT.

MR. BOMBAUGH: I AM ALWAYS WORKING, YOUR HONOR.

THE COURT: WELL, I THINK I WOULD LIKE TO WORK OUT, SO THAT IT IS NOT EMBARRASSING, THE DESCRIPTION OF THE CIRCUMSTANCES.

MR. BOMBAUGH: MAY I MAKE A SUGGESTION, YOUR HONOR, ON PROCEDURE?

THE COURT: YES.

MR. BOMBAUGH: BECAUSE I THINK THAT WE ARE NOT ALL THAT PRESSED FOR TIME. WOULD THIS BE AN APPROPRIATE TIME TO ANNOUNCE THE DECISION, WITH AN OPINION TO FOLLOW TOMORROW, WITH AN OPPORTUNITY TO LET THE OFFICERS IN CHARGE OF CLASSIFYING INFORMATION, THE STATE DEPARTMENT PEOPLE --

THE COURT: I WANT TO GIVE THE LOSING PARTY AN OPPORTUNITY TO GO TO THE COURT OF APPEALS. I WILL DO IT THIS WAY, WITH A FURTHER AMPLIFYING MEMORANDUM.

MR. BIRCH: ONE THING THAT WE HAD NOT ADDRESSED, YOUR HONOR, THAT WE TALKED ABOUT WOULD BE WHETHER OR NOT THE COURT WOULD BE RECEPTIVE TO ANY TESTIMONY BY THIS WITNESS AS TO HARM TO THE THIRD PARTIES, SHOULD THE COURT OTHERWISE BE INCLINED TO ISSUE SUCH AN ORDER, GOING ALONG THE LINES OF THE THREAT OF BODILY HARM TO PEOPLE, THREAT TO PEOPLE'S LIVES, IF YOU WERE TO TRY TO FASHION SOME KIND OF RELIEF.

THE COURT: I DON'T WANT TO DEAL WITH A PROBLEM

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THAT IS NOT BEFORE ME.

JUST TO TELL YOU WHAT I WOULD DO, IF I WERE GIVING RELIEF, I WOULD SAY THAT YOU HAVE AUTHORITY IN HERE TO REFUSE TO LET SOMEONE WHO IS NOT DEPARTING VOLUNTARILY -- REFUSE TO LET HIM BE TAKEN AWAY.

MR. BOMBAUGH: MAY I POINT OUT, YOUR HONOR, THAT THERE IS NO PENALTY FOR VIOLATING A DEPARTURE CONTROL ORDER. IT HAS NO TEETH WHATSOEVER, AND THAT THE ONLY WAY IT WORKS --

THE COURT: ALL I WAS ABOUT TO SAY WAS THAT THE ENFORCEMENT OF THE LAW IS NOT MY RESPONSIBILITY, AND, AS A MATTER OF FACT, I LEARNED THAT IN MY FIRST ASSOCIATION WITH THE BORDER PATROL. IT WAS THE RESPONSIBILITY OF THE EXECUTIVE BRANCH.

MR. BIRCH: BUT, WITH ALL RESPECT, THE CONSEQUENCES OF YOUR ORDER, IF IT WERE TO RESULT IN THE DEATH OF PEOPLE OR HARM TO PEOPLE, BECAUSE WE WOULD HAVE TO BOARD AND INVADE A RUSSIAN SHIP, THAT WOULD BE YOUR RESPONSIBILITY, AND THAT WOULD BE WHAT THE TESTIMONY WOULD BE ABOUT.

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THE COURT: ALL RIGHT. THAT IS YOUR PROFFER.

MR. BIRCH: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT.

WHAT IS YOUR NAME AGAIN?

THE WITNESS: ROGER BRANDEMUEHL.

THE COURT: RIGHT. THANK YOU.

ARE YOU CHIEF OF THE BORDER PATROL?

THE WITNESS: ASSISTANT COMMISSIONER.

THE COURT: ASSISTANT COMMISSIONER OF THE BORDER PATROL.

THE WITNESS: YES, YOUR HONOR.

THE COURT: WELL, WHAT I WAS GOING TO PREFACE ON THIS WAS: IN RELIANCE ON REPRESENTATIONS BY THE UNITED STATES THAT TESTIMONY IN OPEN COURT AND CROSS-EXAMINATION OF WITNESSES TO THE INTERVIEWS OF MEDVID SUBSEQUENT TO THE OCTOBER 24TH INTERVIEW MIGHT ENDANGER FOREIGN RELATIONS OF THE UNITED STATES, THE COURT RECEIVED THE TESTIMONY OF ROGER BRANDEMUEHL, THE ASSISTANT COMMISSIONER OF THE BORDER PATROL, IN CAMERA.

ALL RIGHT. I WILL WORK THIS OUT AND BE WITH YOU ALL IN ABOUT 10 MINUTES.

MR. BOMBAUGH: THANK YOU, YOUR HONOR.

MR. BIRCH: YOUR HONOR, IS THE WITNESS EXCUSED? CAN WE SEND HIM HOME?

THE COURT: WELL, LET HIM STAY IN THE COURTROOM.

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YOU DO NOT WANT --

MR. BIRCH: I THINK WE WOULD PREFER THAT HE NOT BE IN THE COURTROOM.

MR. BOMBAUGH: I WOULD JUST AS SOON THAT HE NOT BE SUBJECTED TO THE PRESS AT THIS TIME.

THE COURT: ALL RIGHT. WHY DOES HE NOT STAY IN THE U. S. ATTORNEY'S OFFICE.

MR. BOMBAUGH: HE IS ALSO MY RIDE HOME, YOUR HONOR.

THE COURT: ALL RIGHT.

(END OF EXTRACT ORDERED.)

- - - -

I, THOMAS DOURIAN, CERTIFY THAT THE FOREGOING IS THE OFFICIAL TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER; AND THAT IT IS COMPLETE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

OFFICIAL REPORTER

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APPENDIX 5

SWORN AFFIDAVITS OF MESSRS. JOSEPH AND WAYNE WYMAN

In the Parish of PLAQUEMINES
TOWN OF BELLE CHASSE, STATE OF LOUISIANA

I Joseph WYMAN, duly sworn
hereby give the following statement
of my own free will and accord:

1. My name is Joseph Wyman and
I reside in Belle Chasse, Louisiana.

2. Today is November 1, 1985, and
I am providing this statement to
Agent A. Tejera of Phoenix, Arizona.

3. On October 24, 1985, a Thursday, at
7:30 - 8:00 P.M., I was closing my
jewelry store when I noticed a
man running up the parking lot
and ran to my nephew, Wayne Wyman.

4. My nephew asked me to come there
because the man was speaking
in a foreign language.

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5. I then walked over to them and the man appeared very excited and I noticed that he was cooking meat. It was not morning that night. The man was babbling or trying to speak in a foreign language.

The only thing I was able to understand was "NOVI ORLEAN". I understood this to mean New Orleans. I then understood the language to be some Eastern European dialect.

6. I then asked the man if he was Russian. He responded, by shaking his chest with his fist, and saying 'Ukrainian'.

7. The man appeared extremely nervous and kept looking South, the direction from which he came.

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8 The man was dressed in the following manner: He had on brown shorts, blue pullover shirt, sneakers and black socks.

The man was carrying a brown jar which I later learned from my Nephew, contained the mans papers, watch and a small red object.

9. I then spoke with my nephew and tried to calm the man down.

10. I then asked the man and said: "You, New Orleans". He said "YES".

I asked him again "You, Original, New Orleans". The man responded "YES"

11. I'm not sure if the man understood

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what I meant, but, based on the facts before me, I felt this man was trying to defect to the United States

12. Based on my past experience as a Jefferson Parish Deputy Sheriff, I felt this man was trying to defect to the United States.

13. I then asked my Nephew to take the man to New Orleans where he wanted to go.

I then asked the man, "New Orleans?" and gesturing "where". He responded "Policia"

14. My nephew agreed to take him to New Orleans and they both left in my nephews car.

15. Approximately 3-5 minutes later, there

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men approached me and only one man spoke. Two of the men were tall and large muscularly and the other one was of average height and weight.

16. One of the men asked me if I had a man walking around. I asked him "Why". He said "one of our "comrades" fell overboard and may be hurt and wandering around looking for help.

At that time, I felt it was in my best interest, that I tell them "No"

I knew these men were after him and I wanted to protect him.

I personally felt they were after the man.

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17. The statement I have provided above is true and accurate to the best of my knowledge.

JOSEPH H. WYMAN

Sworn to before me this 1st day of November, 1985.

GEORGE PIVACH, II
NOTARY PUBLIC, PARISH OF PLAQUEMINES, STATE OF LA
MY COMMISSION IS GIVEN FOR LIFE

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In the Parish of Plaquemines,
Town of Belle Chasse, State of Louisiana

I Wayne Wyman, duly sworn hereby give the following statement of my own free will and accord:

1. My name is Wayne Wyman, and I reside in ~~Belle~~ Algiers, Louisiana in the Parish of Jefferson.

2. I have read the statement of my uncle, Joseph Wyman, I would like to reiterate the facts illustrated in paragraphs 1 -- 14, as being true and correct to the best of my knowledge.

3. Upon leaving the premises with the man who approached us in the parking lot I then did drive him to New Orleans

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4. After we left my uncles jewelry shop, I was together with the man for about an hour.

5. During that hour, I tried to figure out where he wanted to go.

The man picked up an envelope from my car seat and gestured that he wanted to write.

He then wrote the words "Polizia" on the center of the page. Then he wrote "Vari Orlean" below it, and drew a circle around the word "Polizia" and drew an arrow to the word "Orlean".

He then drew a line separating the page. On the upper right hand corner, he wrote "USSR", He pointed to the "USSR" and then gestured that where he was from.

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6. I said to him "I think you are trying to defect."

I don't believe he understood what I said, but, I know that's what he wanted to do.

7. I then drove him to the police station and left him there.

The man was pointing at the police station and motioned for me to stop.

8. The man appeared to be of sound mind and body as best as I could tell. He even wrote my license plate number down. He also could understand some road signs.

9. Once we got to the police station, ~~I broke~~ I let him get out of the car.

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10. The man tried to thank me by ~~[illegible]~~ shaking my hand or kissing it.

10A. The dozen or so men did with him was left in my car which gave to the U.S. THE BROWN RUG CONTAINED 1296 1/4 GRAMS, AND SOMETHING LIKE 6.

11. The statements I have provided above is true and accurate to the best of my knowledge.

12. A copy of the statement the name writes on the outback of the envelope is attached. The original is with the

Wayne E. Wyman

Sworn to before me this 19th day of November, 1985.

GEORGE RIVACH, II

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APPENDIX 6

DEPARTMENT OF THE NAVY PHYSICAL EXAMINATION OF SEAMAN MIROSLAV MEDVID

DEPARTMENT OF THE NAVY

06 November 1985

PHYSICAL EXAMINATION CONDUCTED ON MIROSLAV MEDVID 28 Oct 1985 AT 2341

T. = 100.4 (oral) Pulse = 84 Respiration = 18 Blood Pressure = 130/88

(Note: Patient admits to nasal congestion, slight cough and slight sore throat for past 2 - 3 days.)

General Appearance: Alert, oriented, conversant, no obvious distress. Behaves somewhat flippantly.

Head/face: Normal without evidence of recent trauma.

Ears: Pinna normal bilaterally, canals/tympanic membranes clear.

Eyes: Pupils equal, mid-position, round and reactive to light without Marcus-Gunn, fundi without hemorrhages, exudates or papilledema. Extra ocular movements intact.

Nose: Normal

Throat/mouth: Normal and without lesions.

Neck: Supple, without adenopathy.

Lungs: Clear with good breath sounds in all quadrants.

Heart: Regular rhythm without murmurs or gallops.

Thorax: Normal without evidence of trauma.

Back: Normal.

Abdomen: Without superficial evidence of trauma. Bowel sounds normal, soft, non-tender without masses or hepatosplenomegaly.

Neuro: Cranial nerves grossly intact.

Deep tendon reflexes normal and equal bilaterally (Note: Reflexes in left arm not tested secondary to wrist injury).

Strength in all four extremities grossly normal.

Extremities: Several ecchymotic areas on right arm in various stages of resolution (not noted on exam 26 October 85). Approximately 5 cm. linear laceration anterior left wrist with three silk (?) sutures in place without erythema, drainage, or lymphangitic streaking. Patient able to flex left fingers and had good capillary refill in nail beds. Extremities otherwise normal.

Lymphatics: No left axillary or left epitrochlear adenopathy.

Assessment: (1) Probable mild viral syndrome
(2) Apparently superficial laceration left wrist (healing well).
(3) Apparently minor trauma right arm.
(4) No evidence that patient is physically incapable of participating in his negotiations.

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... Examination 10/26/85 Approx 4:00 PM. EDT

Appearance: brown hair, blue eyes, short stature, approx 150 lb, approx 25-30 years of age.
General: alert, oriented, conversant, no obvious distress (except more anxious than medical situation would explain).
Pulse (radial): strong 96 Resp: grossly normal
c/Head: no obvious trauma (earlier refusal to let EMS prompting left hand)
Ears: no obv. trauma or blood from canals
Eyes: Pupils mid-position, equal, reactive to light.
Nose: Grossly normal. No evidence of trauma
Mouth: not examined but no blood on lips/teeth

Lungs: good breath sounds all areas
Heart: regular rhythm
Abdomen: no bruises/evidence of trauma. Soft and non-tender.
Posterior Thorax: no evidence of trauma.
Extremities: all normal without evidence of trauma or recent restraints (i.e. indentations/abrasions/bruises at ankles or wrists) except left arm which was bandaged from base of fingers to proximal ⅓ of upper arm. There were also several superficial, clean lacerations on exposed fingers.

Neurological: cranial nerves grossly normal by simple observation.
Cerebellar function: not tested
motor: able to move all extremities on demand.

Assessment: ① minor injury to left arm
② Anxiety
③ No evidence of altered mental status from medications/drugs.

APPENDIX 7

Department of the Air Force Psychiatric Evaluation of Seaman Medvid

DEPARTMENT OF THE AIR FORCE

RECEIVED
NOV 08 1985

REPLY TO ATTN OF

30 October 1985

SUBJECT Psychiatric Evaluation in the Matter of Medvid Myroslav (Subsequently Referred as MM)

TO

Department of State
Washington, D.C. 20520

1. In the above matter, the following primary conclusions were reached by me as psychiatric consultant to the U. S. State Department. My involvement began with telephone communication regarding the matter on Sunday, 27 October 1985, with the on-the-scene consultation from approximately 1500 hours on Monday, 28 October 1985 until approximately 1700 hours on Tuesday, 29 October 1985 and with direct, "eyes-on" observation of MM beginning approximately 2130 hours on Monday (enroute from the U.S.C.G. Cutter Salvia to Naval Support Activity). This included about 6-8 hours of direct contact and two psychiatric interviews, one about midnight, 0000 hours, and the other about 1100 hours on Tuesday, 28 October 1985. Both interviews were subject to numerous atypical and adverse conditions and limitations. The length of this report is a reflection of both the complexity of the matter and the limitations of available data, with a resultant need to clarify both the sources of information and the relative degree of certainty of various observations, conclusions, and hypotheses.

2. MM was assessed to clearly be, on 28 and 29 October 1985, as competent as basically any Soviet citizen to make a decision in regards to the issue of defection. In addition to the absence of psychosis (i.e., he was in touch with reality and his surroundings), there was no evidence suggestive of any ongoing significant organic mental disorder, including substance-induced intoxication, that would have impaired his competency. He was fully alert, oriented, and conscious, capable of receptive and expressive oral and written language, with no sensory-perceptual impairment or distortion. MM's intelligence was assessed to be average to moderately above average. Furthermore, during this same time frame he demonstrated no evidence of internal conflict or ambivalence regarding his consistently stated desire to return to his ship and the U.S.S.R., and he clearly understood his basic choices.

3. A brief abstract will now be presented, followed by further elaboration:

a. The individual, a rather immature 25 year old on his first trip abroad from the Soviet Union, having spent approximately 4 to 6 weeks on the freighter, rather impulsively decided to jump ship and seek political asylum, but not likely due to any extremely strong political or moral convictions, rather more consistent with his immature, impulsive, action-oriented personality style. His attempt to seek

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asylum, however, backfired, and in anticipating returning to his ship and likely consequences, he became apprehensive and agitated, once again attempting to flee. This attempt also failed. At this point, he probably felt very afraid of the consequences and very much trapped in a corner. It is also hypothesized that upon returning to his ship, he was confronted with several issues, including his parents' lives and welfare, the importance of home and country, with much emphasis on "Mama and Papa." It is likely that he then became rather guilty at having jeopardized his parents' safety.

b. He then became more depressed and agitated, resulting in a suicidal attempt or gesture. He was then treated with medication for his agitation. Around this time, the Soviets had around 24 to 48 hours in which to continue to exert their influence. It appears that they did this in a two-fold fashion, involving threats and enticements. The threats were likely in regards to the safety of his parents if he chose to defect, with the enticement being the promise of personal glory and becoming a "hero" if he "played the game right." He was then rather likely coached on what to say and what not to say, including that he fell from the ship and suffered amnesia, thus avoiding the individual having to explain his previously witnessed actions that were consistent with his earlier desire to defect. This allowed the Soviets to maintain the official position that the Americans were making "much ado about nothing," that MM never intended to defect.

c. The official meeting with MM aboard the Coast Guard Cutter Salvia was key to how well he could fare for himself, his parents, and his country. His initial presentation at that meeting, including the complaint of nausea, etc., was likely due to his anticipation of how he would do at that meeting ("butterflies" before "a big game"). After the key question was answered by him, that he wished to return to his ship and the Soviet Union, it was as if he had passed a test, with relief at his and his parents' new fate and subsequent hypomanic excitement about his triumph.

d. In conclusion, I think the best diagnostic formulation is that the individual suffered an adjustment disorder, with situationally-related depression, agitation and a suicidal attempt/gesture at one point and hypomanic excitement later, as his situation further changed. The possibility, however, still exists and cannot completely be ruled out that this individual, around the period in question, 24-29 October, was exhibiting the first manifestations of a Bipolar Disorder, i.e., manic-depressive illness; but the severity and manifestations of his symptoms more likely reflected his immaturity and level of personality organization.

e. However, on 28 and 29 October 1985, the individual was clearly not psychotic and was clearly competent, to the extent that any Soviet citizen in his position could be, to make a decision in regards to defection.

4. MM and the other Soviets consistently (at least on Monday and Tuesday, 28 and 29 October) alleged that he fell, not jumped, from his ship and that he

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could not recall any events from shortly after hitting the water until he woke up on his ship with his left wrist bandaged and left arm in a restraint. He, therefore, claimed ignorance of key events of 24, 25, and possibly 26 October 1985. However, the weight of the evidence rather strongly suggests that he did, indeed, jump purposefully from his ship and that most likely the claim of amnesia was feigned with neither psychogenic (unconscious) or organically-based amnesia existing.

5. After his statement on board the Salvia to , State Department, that he wished to return to his ship and the U.S.S.R., he continuously demonstrated numerous hypomanic features, but never to delusional or psychotic proportions, and not impairing his basic competence. (Analagous to how one's having a cold, broken arm, or even possibly cancer would not necessarily affect one's basic ability to perform intact physical activities.)

6. MM's basic premorbid personality was assessed to be rather immature and impulsive, with a basic action-, not reflective-, orientation to life. A past history of minor head trauma, with subsequent mild concussion, secondary to an accident sustained while playing hockey approximately 10 to 15 years ago, raised the possibility of a subtle organic factor contributing to his immature personality, i.e., a mild organic personality syndrome or mild organic affective syndrome. However, information gathered from the physical examination performed by U.S.N., and additional neurologic examination and mental status testing by myself, failed to reveal any correlating positive neurologic signs. (The absence of such physical findings does not, however, rule out the possibility of this subtle organic factor.) (One additional possible organic factor that possibly related to his immature personality and action-oriented personality style would be a history of M.B.D. (Minimal Brain Dysfunction), also known as Attention Deficit Disorder with Hyperactivity. It was beyond the possibilities of my evaluation to confirm the presence or absence of such history.)

7. Significant and unfortunate gaps in available data make it rather speculative assessing the individual's mental status prior to his jumping ship on Thursday, 24 October 1985 through Monday evening, 28 October 1985. However, an effort will be made to piece together what information is available.

8. It is my conclusion that the individual's motivation for jumping from his ship and initially seeking political asylum was based primarily on a rather impulsive decision, "Grabbing for the glitter and gusto," rather than on any deep-rooted political or moral beliefs. This conclusion is based on factors including his previously mentioned personality features, consideration of how rapidly and dramatically his intentions changed between 24 and 28 October 1985, and the history of 25 years of previous Soviet acculturation and indoctrination.

9. Review of the Record of Deportable Alien Form completed by Border Patrol Agent four sworn affidavits obtained by I.N.S. officials from , PI with phone conversation by me with the interpreter used by Border Patrol officials on the evening of 24 October 1985, yielded no information that would indicate any serious psychiatric problems from the time the individual reached the banks of the

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Mississippi until just prior to MM being returned to his ship. There was no information that would have led me to think that he was at that time suffering from schizophrenia, clinical depression, mania, hypomania, various forms of psychogenic amnesia, dissociative phenomena, post-concussive syndrome, or intoxication. stated to me that she noticed nothing abnormal in his rate, flow, form or content of speech; he responded affirmatively to her direct questions about his desires to seek asylum for political and moral reasons. (The Report of Deportable Alien Form, mentioned above, also reflects this, stating, "Subject claims that he jumped ship in the United States for political and moral reasons.")

10. He was also, during this period of time, apparently fully conscious and alert, with no disorientation, no problems with self-identity, with clear evidence from witnesses of purposeful, conscious motivations to seek asylum (these observations strongly tend to exclude the possibility of this individual having suffered his amnesia based on a post-concussive syndrome, and clearly affirm his initial desire to seek asylum.) did note that he expressed some concern and anxiety in regards to what he perceived as the Americans' discussion of possible arrest. She further stated that he had been appropriately excited and relieved talking with her in his native language (they spoke in Ukrainian and Polish), but expressed disappointment when she told him she was too far away to come quickly to where he was located. She apparently made some inquiries into the reasons for his desires to seek political asylum, but she recalled him stating something to the effect, "I can't tell you all the reasons," which she perceived as based on apparently his concern about the time involved on a long distance call. In regards to MM's mental condition while being taken from the Border Patrol Office back to his ship, review of the statements indicate that he appeared "happy" until Belle Chasse was approached and he saw the smokestack of his Soviet vessel. He then appeared anxious and reluctant. MM eventually dove off the small boat as it reached the Soviet vessel, and it was necessary for the individual to be run down and restrained after he swam to shore. While restrained, the statements report that he was very agitated, banging his head on the ground.

11. Apparently some time Friday, 25 October 1985, MM sustained a laceration to his left wrist, volar surface. The Soviet doctor, during relatively non-political patient-oriented discussion, indicated to me that after being returned to his vessel, MM became depressed, withdrawn, would not speak, and would not eat. It was also described to me by the Russian doctor that MM himself inflicted the laceration on his forearm. The Soviet doctor furthermore described to me his impression that MM had a brief psychotic reaction; in addition to receiving medical attention, i.e., suturing the superficial laceration, he was treated with pain medication and tranquilizers. On further inquiry by me, the Soviet doctor stated that the medications given were Amonizine (sp?) and Seduczine (sp?), which he stated were commonly used in his country to treat Schizophrenia. (This led me to the tentative conclusion that MM had been treated with neuroleptics (major tranquilizers) similar to common U.S. pharmaceuticals such as Thorazine, Mellaril, Stelazine, Navane, and Haldol which are used to treat schizophrenia, bipolar disorder, acute agitation or brief psychotic reactions. This would be consistent with what was reported to me by U.S. officials, namely that MM appeared heavily sedated for a period of time (8 hours?) during part of the weekend back on the ship.) However, on 28 and 29 October 1985 MM did not appear to be under the sedative effects of any medications, with no indications of other side effects which would commonly

be seen if he were under the neuroleptic or psychotic-controlling effects of major tranquilizers. This would also be consistent with MM having been treated with a major tranquilizer shortly after a suicide attempt or gesture, with any sedative or other effects having since worn off.

12. During the period from Friday, 25 October until Monday, 28 October, MM was primarily "in the hands" of the Soviets, and as a result, the most speculation occurs in trying to review or reconstruct this period of time. It is possible that he pleaded falling, and amnesia, to his comrades upon returning to his ship (to consciously avoid adverse consequences), but the other Soviets most likely knew otherwise, based on his resistance to reboarding his ship. The entire picture surrounding the "amnesia" is not highly suggestive of either an organic or unconscious, psychogenically determined basis.

13. My opinion (and the concensus of the American group primarily handling the situation) was that during this period he was presented with issues such as his parents' welfare (even probably their lives), adverse personal consequences, patriotism, and bonding to his fellow shipmates and other comrades. He was also likely enticed with such things as personal glory and becoming a hero among his comrades. He was then likely coached on what to say to the Americans, including that he fell, not jumped, and that he suffered amnesia after falling until he later awoke on his ship. His "amnesia" could have possibly been induced by the Soviets via hypnosis and post-hypnotic suggestion, but I have no evidence to support this possibility. Nevertheless, MM sticking to this story of falling and amnesia would have clear diplomatic advantage for the Soviets.

14. It is my hypothesis that he reconsidered his position and agreed to go along with this story, saving his parents, allowing him to see them again, and to be a hero and in the "limelight." His major challenge then was only to convince the Americans.

15. Why did he change his mind about defecting? If he had, prior to jumping, thoroughly thought out all aspects of his initial desire to defect, he would have already considered the issue of his parents and resolved this issue by the time that he jumped ship. Jumping impulsively, before considering various consequences, left more room for the Soviets to use his parents and any other poorly thought out issues as a lever. In support of this hypothesis, it should be noted that during the course of my direct observations, MM made numerous references to the significance of family and specifically to "Mama and Papa." For example, in the final formal interview with State Department officials regarding the question of political asylum, he made four references to "Mama and Papa," and at one point stated essentially that the most important issue for him was "life" and that this issue was in the hands of the American authorities, based on honoring his request to return to the Soviet Union so that he could once again see "Mama and Papa." He did not state "my life," but rather, "life." Additionally, deciding to go along with his native country's "game plan" would have given him a way to "save face," and deal with any shame he felt.

16. U. S. personnel, including Dr USN, present during the formal diplomatic interview of MM aboard the Salvia later reported to me that he came across in two very distinct ways during that interview. Until immediately following his response that he wished to return to his ship and

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the Soviet Union, he was essentially described as looking slightly sick and complaining of nausea, requesting to leave the room and go on deck for fresh air several times. He was seen as somewhat distractible, and at times appearing rather uninvolved emotionally with the discussions. Several Americans there perceived him winking at them, with one of these individuals perceiving MM as doing this in such a way that none of the other Soviets would pick up on it. (I later, however, saw him wink to one of the other Soviets.)

17. Much interest was later generated among U. S. personnel present at that meeting in regards to his demeanor and the long pause after he was asked the key question of his intentions. He slowly drank a considerable amount of water at that point, and the concensus was that he did not seem to be intently pondering the question. My speculative analysis is that he was essentially "milking the moment" for effect.

18. Several Americans present at that meeting noted a rather abrupt change in his demeanor and presentation following his reply to that question. This involved his being much more animated and spontaneous with brightened mood. It also appears that it was at this time that he began to rather actively devalue American products, such as cars, cigarettes, etc., and, according to interpreter, to first demonstrate abnormally rapid speech. This was noted intermittantly thereafter, and when present was associated with occasional "language slippage." (His native language is Ukrainian, but said that MM had previously demonstrated pretty good control of the Russian language. But when the rate of his speech increased, he would "get ahead of himself," and regress to intertwining Ukrainian with Russian.)

19. Within an hour or two of this, enroute from the Salvia to land, I had my first direct observations of MM. During this period, he consistently demonstrated a picture congruent with the abruptly changed picture noted by the Americans present at his key announcement aboard the Salvia. He was essentially hypomanic.

20. We noted pressured, overelaborate, and affectively-charged speech, several clang associations (although these were never nonsensical), with possible flight of ideas (to a mild degree). His mood was predominantly expansive, jocular and euphoric, but with occasional, abrupt changes to agitation, annoyance, and defensiveness toward the Americans. He was mildly distractible, hyperactive, inpatient, and energetic.

21. His expansive mood and high energy level resulted in, and were associated with, a partial loss of impulse control and usual concern for "protocol." For example, he made several out-of-context, rather silly sexual gestures, having to do with heterosexual intercourse. For example, when asked by Dr. to lie back on the bed for part of the physical exam, his scooting back to lie down quickly turned into vigorous bouncing on the bed, with sexual overtones and gestures. At one point in my second formal interview, I commented and inquired with him about his expansive mood and jocular style. He then, in an agitated fashion, verbally resolved to maintain a controlled and serious demeanor, but was rather quickly again back to the previous style.

22. He was flamboyant and somewhat dramatic, as well as grandiose, although never to delusional proportions. He took delight in being the center of attention, exemplified by his interest in the TV news coverage. He attempted at least several times to call attention to his fine physical stature, and he constantly attempted to assert his talents and intelligence. (As well as his "accident" on 24 October and his "amnesia," whenever asked.)

23. He enjoyed being a Soviet advocate, "beating and outsmarting" the Americans; hypervigilant and guarded toward the Americans, but unguarded and even inappropriately "chummy" with the ship's captain and Mr. of the Soviet Embassy. The whole picture was analogous to, for example, a Soviet hockey player "psyched up" and excited about the game against the archrival American team. His responses to formal mental status questions also indicated hypomanic features.

24. Several observations of the other Soviets also support the hypomanic qualities. Although generally appearing supportive of him, by the end of the sessions on Tuesday afternoon, 29 October, the ship's captain was clearly getting annoyed with the individual. Additionally, the Soviet physician was unable several times to restrain his amusement at several of MH's impulsively jocular actions and comments. The Soviet physician later stated that he didn't mind me asking him about his patient, but that he requested I do it away from MH due to his labile affect and agitation.

25. During my second interview with him, MH became particularly upset when I questioned him as to why he had become depressed upon returning to his ship, if in fact he was so glad now to be back with the other Soviets, looking forward to returning to his country. This was followed by his accusing me of trying to make a fool out of him, and refusal to answer any more questions unless the Soviet Embassy was called and gave approval. (This also demonstrated some of his grandiosity, in that he went right over Mr. this was MH's personal demand!) Several efforts were made to defuse the situation and to continue the interview, but his refusals and protests, along with more official Soviet protests, resulted in and I consulting and concurring to terminate my second interview.

26. DIAGNOSTIC IMPRESSIONS: Based on my direct observations, during the period of time when MH demonstrated hypomanic features, I found myself strongly entertaining the possibility of a major affective disorder, namely Bipolar Disorder or Manic Depressive Illness. However, since I have had some time to reflect more on the situation, I currently consider it more likely that he had an immature personality, later developing signs and symptoms in response to severe stress related to his aborted attempt at defection. This hypothesis leads to the assessment of his jumping and defection attempt as being somewhat impulsive. But, if one hypothesizes that he did suffer from Bipolar Disorder, then his jumping and defection attempt would have likely been secondary to the illness, and thus, still impulsive in nature. Finally, there was no evidence suggestive of a paranoid or schizophrenic disorder, and his hypomanic features were not likely induced by drugs (such as amphetamines or stimulants) or ongoing physical illness due to the absence of correlating findings on his physical exam.

27. In summary, although based on less than complete data and resultant uncertainty in regards to a specific diagnosis, it was my determination that the individual was clearly competent and not psychotic on 28 and 29 October 1985. (Furthermore, he would not have been committable under state statutes dealing with involuntary treatment for mental illness.) For further clarification of the diagnostic labels and psychiatric terminology used in this report, reference is made to DSM III, the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, American Psychiatric Association, 1980. Any additional information or clarification in regards to the content of this report will be gratefully provided by the undersigned.

USAF, MC

Staff Psychiatrist

APPENDIX 8

CORRESPONDENCE FROM REPRESENTATIVES LEE H. HAMILTON AND TOM LANTOS TO THE DEPARTMENT OF STATE AND IMMIGRATION AND NATURALIZATION SERVICE CONCERNING THE CASE OF SEAMAN MIROSLAV MEDVID

November 14, 1985

Mr. Alan C. Nelson, Commissioner
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Dear Commissioner Nelson:

The Subcommittee on Europe and the Middle East appreciated your testimony on November 7, 1985 on the Miroslav Medvid case, but would like to request further testimony by INS officials.

We believe that, because of your internal investigation in the Justice Department, several facts about what happened during the night of October 24-25 were not elucidated during the first hearing.

We, therefore, would like to request further testimony now that that internal investigation is completed. We believe that the INS agents who were directly involved in the incident should be allowed to testify because they are the most appropriate witnesses to give full testimony concerning the facts in this case. Their testimony can be crucial to closing this matter.

We appreciate your consideration of this request. This hearing is to be scheduled the week of December 2nd. If you have further questions, please do not hesitate to call us or Mike Van Dusen, Staff Director of the Subcommittee on Europe and the Middle East who can be reached at 225-3345.

With best regards,

Sincerely yours,

Tom Lantos

Tom Lantos
Ranking Majority Member
Subcommittee on Europe
and the Middle East

Lee H. Hamilton
Chairman
Subcommittee on Europe
and the Middle East

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JOHN J. BRADY, JR.
Chief of Staff

Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

November 14, 1985

Honorable George P. Shultz
Secretary
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

As you know, the Subcommittee on Europe and the Middle East held a hearing, November 7, 1985 on the Miroslav Medvid case and received testimony from Assistant Secretary Ridgway.

The Subcommittee will be holding a follow-up hearing now that the investigation of the Justice Department has been completed. We wish to request that the psychiatrist who interviewed Seaman Medvid for the State Department be available for testimony along with any other witnesses the State Department wishes to designate. Serious questions have been raised about that interview on the basis of the summary of the doctor's interview of Seaman Medvid provided to the Congress. We believe that those questions must be answered.

We appreciate your consideration of this request and trust that testimony can be arranged for the week of December 2, 1985. If you have further questions, please do not hestiate to call us or Mike Van Dusen, Staff Director of the Subcommittee on Europe and the Middle East.

With best regards,

Sincerely yours,

Tom Lantos

Tom Lantos
Ranking Majority Member
Subcommittee on Europe
and the Middle East

Lee H. Hamilton
Chairman
Subcommittee on Europe
and the Middle East

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United States Department of State

Washington, D.C. 20520

DEC 10 '86

Dear Mr. Chairman:

Secretary of State Shultz has asked me to respond to your letter of November 14 in which you requested witnesses for a follow-up hearing on the issue of Soviet Seaman Miroslav Medvid.

In particular, you requested that the psychiatrist who interviewed Seaman Medvid be made available for testimony concerning his report of the interview with Seaman Medvid, along with any other witnesses which the Department of State may wish to make available.

As you know, Assistant Secretary of State for European and Canadian Affairs Rozanne L. Ridgway, Commissioner Alan Nelson of the Immigration and Naturalization Service and other officials appeared before your Subcommittee on November 7 to state the views of the Executive Branch. These policy-level officials have spoken for the Executive Branch and we do not believe it is appropriate for staff-level officers, such as the psychiatrist, to testify.

We welcomed the opportunity to have Executive Branch policy officials testify before the Subcommittee. However, it is our policy not to designate staff officers to testify before Congress concerning actions that they took in carrying out policy. We therefore have no additional witnesses we would wish to designate for a further hearing.

With best wishes,

Sincerely,

William L. Ball III
Assistant Secretary
Legislative and Intergovernmental Affairs

The Honorable
Lee H. Hamilton,
Chairman, Subcommitee on Europe and the Middle East,
Committee on Foreign Affairs,
House of Representatives.

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APPENDIX 9

Opening Remarks of Hon. Edward Feighan and Newspaper Article Concerning the Case of Seaman Miroslav Medvid

Thank you, Mr. Chairman, and may I commend you for your initiative in asking for these hearings.

Mr. Chairman, in the last 2 weeks the subject of Soviet defection has commanded the attention of this country. It is a phenomenon that touches almost every American: Those who came here to escape oppression, those whose parents risked all to give their children the promise of freedom, and anyone who holds dear the human rights and dignities denied to those living under the harshness of communism.

In my District in Ohio, there are two women for whom the attempted and then allegedly retracted defection of Miroslav Medvid has special meaning. Americans with roots in the city of Leviv, the home town of Miroslav Medvid, they recognized their family name and discovered that Mr. Medvid is their cousin. They told me of their frustration at being told that Mr. Medvid had voluntarily decided to return to the Soviet Union without benefit of meeting them; without the comfort of talking with relatives about his wishes; without even an inkling that such an option existed.

Mr. Chairman, one does not have to be a relative of this young man to question his dramatic change of heart, and to wonder about his motivations, his treatment, and his future back home. I sincerely doubt that anyone in this room has illusions about the treatment Mr. Medvid will receive on board his ship, or upon his return to the Ukraine. The Soviets do not suffer such displays gladly.

I am here today because I am frustrated and very troubled by the shoddy handling of all the events surrounding Mr. Medvid's attempts to leave his ship, and perhaps his country. I am not satisfied that this case is closed, and I am appalled that this man could be sent home to his peril against his will, and without his informed consent.

Let there be no mistake: Grave errors of judgment and conduct were made by the immigration service when they first dealt with Mr. Medvid, and by the State Department afterwards. I am not interested in discussing today who was the most at fault; culpability in this case is rampant.

Let us remember, however, that Mr. Medvid is still on his ship, which is still on the Mississippi River. This man's life is very much in our hands as long as we have the power to intercede. At a minimum, we have an obligation to provide this Ukrainian seaman an opportunity to meet with his family, and every minute that we wait moves us farther from that possibility.

But we have a chance today also to discuss the larger question of how we in the land of freedom treat those who come to us for help.

I submit to you that our procedures are vague, our sensitivity to defectors inadequate, and the coordination in such cases disastrous. Mr. Medvid should never have been returned to his ship after his first attempt to flee. The fact that his wrists had been slashed

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should not have been considered incidental information. And it should not remain unclear to this day what this man's native language is.

I suggest that what is now considered standard procedure for the treatment of possible defectors must be reevaluated and changed. Specifically:

A potential defector, when identified by an agent of the U.S. Government, should immediately be placed in protective custody and kept under U.S. jurisdiction—without the presence of Soviet Officials—for a minimum of 3 days time.

He should be taken to a "nonpunitive" facility such as a hotel to prevent the misconception that he is considered a criminal by this country.

He should immediately be provided with a lawyer and a translator, given a thorough examination, and be assured of due process of law.

It should be clearly established whether there is family in the United States. If so, he should be allowed to meet with them. If not, he should be allowed to communicate with his family back home.

Soviet officials should be allowed one interview with a potential defector, but should be prevented by U.S. authorities from any disruptive or threatening actions during such an interview. At no other time should Soviet officials be allowed to participate in the interviews to establish the wishes of the defector, unless he specifically asks for their participation.

[I ask that the text of an article by Mr. Jack Landau outlining a similar proposal be included in the record at this point:]

AT LEAST GIVE DEFECTORS THREE DAYS AND A JUDGE

(By Jack C. Landau)

Washington.—President Reagan should issue an executive order establishing an impartial and comprehensive procedure to assure that potential Communist-nation defectors will not be sent back to communism against their wills.

The procedure should automatically require that the potential defector immediately be given a local attorney, be placed under the protective guardianship of the local U.S. district court and kept under the jurisdiction of the United States in a non-punitive facility—such as a hotel—for a minimum of three days before a final decision is made on whether or not he may stay.

This will protect him from being turned back to the Russians in the interim, where he can be isolated by KGB agents and physicians and then subjected to intense drug pathology and psychological and physical intimidation.

In the most recent case, a young Ukrainian sailor immediately was returned to his ship twice; kept under the exclusive control of what were presumably Russian KGB and medical agents for at least 60 hours.

He was then presented by the Russians to the Americans for a "neutral" 20-minute interview—during which it was determined that he really wanted to go back to the Soviet Union despite two efforts to escape.

There is no way—in a 20-minute verbal interview—any government official (not even a trained psychiatrist) could make a reasonable decision that the defector was giving the government interviewer his real wishes.

He might have been heavily under mind-altering drugs and suffering from the induced effects of 60 hours of psychological modification therapy and brain-wave electrical inductions—techniques at which the Russians are experts.

Every Soviet ship carries at least one experienced KGB political officer and a physician and a ship of this size might have had more.

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In addition, the Soviets sent down to Belle Chasse La., two embassy officials who it is presumed were KGB agents—as is half the embassy personnel here—experienced in interrogation and medical matters.

Because they are covered by diplomatic immunity, they could well have brought medical equipment, drugs, recorded pleas from the family being threatened and other aids to use on the sailor while he was imprisoned on the ship under their total control.

Further evidence of this sham interview conducted by the Immigration and Naturalization Service, was its decision to finally interview the sailor with Soviet officials present.

This is like allowing a criminal suspect to talk to a lawyer or minister while putting the police sergeant in the same room.

Twenty years ago, the U.S. Supreme Court said that the atmosphere of a loose suspect being interrograted in the police station by experienced police detectives—isolated from friends and family—was inherently intimidating.

Therefore, the court said, no confession made by the suspect could be valid unless a lawyer was present or the suspect refused to accept a lawyer.

The typical American police station questioning is like kindergarten compared to what that young sailor may have gone through on that ship for 60 hours.

The constitutional law of our country says that when a person is under the control of the United States—as the sailor was when he jumped—that the government has no power to return him to a foreign power without some type of due process hearing if he requests it.

In practice however, for years, nations have treated young sailors more informally on the theory that they probably have fallen in love or gotten drunk on shore leave—and "boys will be boys" so let's take them kicking and screaming back to their ship.

While there is a certain amount of validity to this age-old tradition, there are times when boys can be adults—which appears to be the case with the Ukrainian sailor.

The sailor was turned back not once but twice. The hearing he had was a sham by any standards.

The President should revise the system. He should require that any potential defector be taken into protective guardianship immediately under the supervision of the local U.S. district court, be given an attorney, a medical examination, and a translator, and be interviewed by government officials and probably a psychiatrist.

He should be placed in some non-threatening type of housing such as a hotel and allowed to talk if he wishes to his family by phone or to members of the Russian community in the local area.

He should be allowed to stay in this friendly protective environment for at least three days if he wishes in order to allow officials to obtain the results of his interviews and medical tests and to allow him to think things over.

Foreign officials, if they wish, would be able to interview him at least briefly. But his attorney, a translator, and perhaps even a stenographer should be present to make sure that he is not threatened.

Soviet officials have no right to talk to people against their wishes whether they are Soviet citizens or not when they are in the United States.

Nor can Soviet personnel threaten a man under the jurisdiction of the United States merely because he is a Soviet citizen, just as they have no right to threaten anyone else in this country.

Once again by tradition, diplomatic personnel are given the courtesy of being allowed to talk to their nationals—even if the nationals do not wish to see them.

If, during the interview, they become threatening, they should be immediately ejected and not permitted to have another contact unless the defector wishes to see them again.

At the end of the three-day period, the potential defector should be told he has to make a final decision which he should communicate to American officials in the privacy of their offices and without Soviet officials nearby.

To assure that his decision has been carefully weighed, he should then be taken before the U.S. district court judge in his chambers for an interview to confirm—or contest—the government's recommendations.

In handing down this order, the president should give no significant policy-making role to any agency which would have a political reason to coerce the defector into staying against his will or leaving against his will.

The Navy might wish information about some equipment on his ship or the State Department, as has been alleged, might wish him to leave to smooth over international political problems.

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Even the Justice Department, being directly under the President, could be told of a political agenda for the potential defector's staying or leaving.

The courts traditionally serve as guardians for minors, the senile and other persons who may need to be guarded when making legal decisions and staying or leaving may be the most important decision in the potential defector's life.

Therefore, allowing the courts to serve as a temporary guardian over a potential defector—whose decision to leave is contested—is a conventional method to make sure that his decision is in his own best interest.

The President has asked Attorney General Edwin Meese to investigate the Immigration and Naturalization Service's handling of the sailor defection. But the INS is part of the Justice Department, which raises an immediate conflict of interest because Meese runs the INS.

With a stroke his pen, the President could establish a reasonable procedure to assure that those in Communist nations who wish freedom will have it and will not be sent back against their wishes.

Mr. Chairman, the establishment of a definition of a noncoercive environment is central to this reform. The State Department apparently believes that a defector in the presence of both United States and Soviet officials is in a noncoercive environment. I suggest that it is a contradiction in terms.

Late yesterday, a young Romanian seaman jumped ship in Florida. How can we expect that case to be handled? How many more Miroslavs will be sent back to the "justice" of the Soviet system?

I would welcome the comments of all our witnesses on these suggestions, and look forward to their testimony.

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APPENDIX 10

U.S. Coast Guard Procedures for Handling Requests for Asylum Made by Foreign Nationals

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS
U.S. Coast Guard (G-OLE)
Washington, D.C. 20593
Phone: (202) 426-1890

COMDTINST 5802.1B
11 JAN 1983

COMMANDANT INSTRUCTION 5802.1B

Subj: Procedures for handling requests for asylum made by foreign nationals

1. PURPOSE. This Instruction promulgates U. S. Government procedures for dealing with requests for asylum made by foreign nationals.

2. CANCELLATION. Commandant Instruction 5802.1A

3. OBJECTIVE. An objective of the U. S. asylum policy is to promote freedom and humanitarian principles by considering requests for asylum made by foreign nationals who may be suffering from persecution or the fear of persecution. This may be accomplished in part by accepting and relaying asylum requests to the Department of State (DOS) for their consideration and taking actions for the protection of the requester pending DOS approval or disapproval.

4. ACTION. The procedures contained in DOS letter, General Policy for Dealing with Requests for Asylum by Foreign Nationals, dated 4 January 1972, enclosure (1), remain effective. At the core of these procedures are the following:

   a. Provide Protective Custody/Refuge.

      (1) Safe protective custody will be provided to the asylum seeker in cases occurring outside a foreign jurisdiction. See enclosure (1), Part Two, paragraph B for guidance in this case.

      (2) If within a foreign jurisdiction, temporary refuge for humanitarian reasons will be given to the requester if his or her life or safety is in danger. See enclosure (1), Part Three, paragraph II for guidance. In cases where the requester is not in danger, the Commandant desires that every effort be made to maintain

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	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A	3	3	3	3	3	2		2	1	1	1	1	2	1	1	1	1	1	1	1	1					
B		5	20		12	7	7	7	5	2	3	3	3	5	1	1	1	5	1	1						
C	5	3	1	3	2	1	2	1	1	1	3	1	1	3	2	1	1	1	1	1	1	1	1	1	1	
D	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
E															2											
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a.(2)(cont'd) contact with the requester during the time that it takes to process his or her request and to receive guidance from the Commandant or higher authorities specified in paragraph 4c.

(a) Thus, even though the applicant does not qualify for temporary refuge as defined in enclosure (1), the commanding officer or officer in charge may provide food and lodging.

b. Inquiries. If foreign authorities are seeking the return of the requester, carefully explain that the decision is not yours to make and the case has been referred to higher authority for instructions. Interview the authorities, explaining you want to include their statements in your report.

c. Notification.

(1) Immediately notify the operational commander, cognizant district commander, Commandant and DOS, as action addressees, that a request for asylum has been received. Provide a summary of the case including all details known at that time. This initial report should not be delayed to gather information required by enclosure (1), Part Two, paragraph A, or Part Three, paragraph IV. If in a foreign jurisdiction, also notify, as an action addressee, the American Embassy or Consulate. If there is any question about the capability to communicate rapidly with Commandant (G-TGC), request the assistance of the nearest Embassy by adding the "Embassy Pass to Other Addressees" in the passing instructions. This notification and follow-up messages should be sent by the fastest available means, using the "immediate" precedence.

(2) In addition to complying with the external notification requirements discussed above and contained in enclosure (1), Commandant (G-TGC) will assure the Department of Transportation internal communication procedures listed below are followed:

(a) Initial notification and amplifying reports shall be relayed immediately to the DOS Operations Center, though already an addressee on the message reports, with a request for immediate guidance and a determination regarding the granting of asylum.

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4.c.(2)(b) Copies of all notifications and reports made to, and all inquiries, guidance and determinations received from, DOS shall be delivered promptly to the Executive Secretary (S-10) and to the Assistant Secretary for Policy, Plans and International Affairs (P-1) or his or her designee.

5. INTERPRETATIONS. For clarification purposes the following interpretations apply to enclosure (1):

a. PART TWO PROCEDURES - A, line 3: U.S. Government agencies means Commandant (G-TGC).

b. PART TWO PROCEDURES - A, line 8: U. S. agency means Commandant (G-TGC).

c. PART TWO PROCEDURES - C: U. S. Government agencies means local command to notify local U. S. Immigration and Naturalization Service (INS) office and Commandant (G-TGC) to notify INS, Washington, D. C. office.

d. PART THREE, II - GRANTING TEMPORARY REFUGE, Sub-paragraph 3, line 5: Senior U.S. official present on the scene means commanding officer or officer in charge.

e. PART THREE, III - NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS, line 2: U. S. personnel within foreign jurisdiction means commanding officer or officer in charge.

J. A. McDONOUGH, Jr.
Acting Chief of Staff

Encl: (1) Department of State letter dated 4 January 1972

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ENCLOSURE (1) to COMDTINST 5802.1 B
DEPARTMENT OF STATE
Washington D.C. 20520
21 JAN 1983

January 4, 1972

General Policy for Dealing with Requests for Asylum by Foreign Nationals

POLICY

Both within the United States and abroad, foreign nationals who request asylum of the United States Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In cases of such requests occurring within foreign jurisdiction, the ability of the United States Government to give assistance will vary with location and circumstances of the request.

U.S. OBJECTIVES

A basic objective of the U.S. is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

BACKGROUND

A primary consideration in U.S. asylum policy is the Protocol Relating to the Status of Refugees, to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition

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against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

United States participation in assistance programs for the relief of refugees outside United States jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

President Nixon has reemphasized the United States commitment to the provision of asylum for refugees and directed appropriate Departments and Agencies of the United States Government, under the coordination of the Department of State, to take steps to bring to every echelon of the United States Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

PART TWO

Handling Asylum Requests by Persons in the United States or in Other Areas Outside Any Foreign Jurisdiction

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States, or aboard a U.S. vessel or aircraft in or over U.S. territorial waters or on or over the high seas, should become thoroughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

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PROCEDURES

A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (Telephone area code 202, 632-1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an IMMEDIATE precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as

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possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means of resistance are available, taking into account the safety of United States personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to headquarters for instructions.

C. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. For INS only: Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.

PART THREE

Handling Asylum Requests by Persons Within Foreign Jurisdiction

This instruction sets forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels or aircraft in foreign jurisdictions.

I. GRANTING ASYLUM

While it is the policy of the U.S. not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

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II. GRANTING TEMPORARY REFUGE

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the American Embassy or consular office having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of American personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

III. NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should notify immediately the nearest American diplomatic or consular office in the country in which the request is made. Embassies or Consulates will forward this information to the Department of State by an IMMEDIATE precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the U.S. may notify those headquarters, with information copies to the nearest

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Embassy or Consular office and the Department of State, by IMMEDIATE precedence message.

IV. INFORMATION TO BE TRANSMITTED

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

V. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. Requests For Asylum

Requests for asylum made at U.S. diplomatic and consular establishments will continue to be dealt with in accordance with the provisions of Volume 2, Section 225.2 of the Foreign Affairs Manual, except that, should temporary refuge be granted, the authority of the Department of State must be obtained before such refuge is terminated.

B. Routine Requests

Requests of third country nationals for asylum made to diplomatic and consular offices need not be reported immediately to the Department of State when all of the following conditions exist:

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(a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.
(b) There is no evidence of danger of forcible repatriation.
(c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. Coordination with Host Country Authorities

Action with regard to third country nationals seeking asylum should normally be taken within the overall policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic and social rights within asylum countries.

D. Available U.S. Assistance

The U.S. is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the Embassy or Consular Office has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

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ADDENDUM

Press Relations

No press release will be issued by any U.S. agency in the United States or abroad concerning asylum being sought. An acknowledgment may be made to the press that a request for asylum has been received and that the request is under consideration in Washington, if this is applicable and is consistent with security and local considerations. The Department of State should be notified immediately of any such acknowledgment.

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APPENDIX 11

Report of the Board of Commissioners of the Port of New Orleans Concerning the Case of Miroslav Medvid

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS
(A Unit of Local Government of the State of Louisiana)
INTER-OFFICE COMMUNICATION

TO: A.T. Ben, Superintendent
Harbor Police Department

DATE: October 28, 1985

FROM: T. Turner, Sergeant

C.C. Messrs: Reed, Joffray, Eckert, Keating, Guidry, Orlesh, Spalluto, Drennan, Olivier, Henrichs

SUBJECT: LOST SEAMAN

On Thursday, October 24, 1985, at approximately 2140 hours, Cpl. W. George, working as Acting Desk Sergeant at Harbor Police Headquarters, received a called from the New Orleans Police Department (8th District Station), stating that they had a lost Seaman. Cpl. George advised them to check the Seaman Shore Leave Papers, but the Seaman refused to show his papers and left the station. At approximately 2155 hours, New Orleans Police called again, and stated that the Seaman had returned, showed his papers, but they could not read the papers or understand what the Seaman were saying due to the foreign language. Cpl. George advised New Orleans Police to transport the Seaman to Harbor Police Headquarters, at which time he would notify Immigration of the situation, and request that they send a agent to Harbor Police Headquarters.

At approximately 2208 hours, New Orleans Police arrived at Harbor Police Headquarters with the lost Seaman, and were met by Officer K. Newman in Harbor Police Unit #5308. The Seaman was turned over to Cpl. George and Officer Newman. Efforts to communicate with the Seaman met with negative results, due to the language barrier. Capt. P. Major, Harbor Police Department, arrived at Headquarters for duty, she contacted a person she knew who spoke several languages. This person made contact by telephone with the Seaman, and afterwards, informed Capt. Major that the Seaman sounded as though he was Russian. After hearing the word Russian, the Seaman responded 'Ya', 'Ya' Ruska' Ruska' from this, it were determined that the Seaman was Russian.

At approximately 2222 hours, two (2) Immigration Officers arrived, and they tried to communicate with the Seaman, but were unable to do so due to the language barrier. They were briefed on what had occurred, and that the Seaman may possibly be Russian. Officer Newman casually mentioned to the agents that the Seaman may want to defect

At approximately 2225 hours, the two Immigration Agents departed with the Seaman, and stated they would have an interpreter to meet them and find out where his ship is located.

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Seaman:
Name: Muroslah, Medwid Russian DOB: 03-24-60
Address: Silco, Sokol, LWOW, USSR.
Shipping Agent: Universal Shipping Company NOLa.
Name Of Vessel: M/V Marshal Koniew
Location Of Vessel: Belle Chase Anchorage, Belle Chase, La.

The above for your information and handle under Harbor Police Department item # 10-1025-85.

T. Turner, Sergeant
Harbor Police Department

APPROVED G. T. Ben
A.T. BEN, SUPERINTENDENT
HARBOR POLICE DEPARTMENT

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APPENDIX 12

STATEMENT SUBMITTED FOR THE RECORD BY THE JOINT BALTIC AMERICAN NATIONAL COMMITTEE

The Joint Baltic American National Committee (JBANC) is pleased to have the opportunity to make a statement before the House Subcommittee on Europe and the Middle East regarding the return of Ukrainian sailor Miroslav Medvid by the Immigration and Naturalization Service's (INS) boarder patrol agents to the Soviet freighter Marshal Konev. JBANC, which represents the three central Baltic organizations - Estonian American National Council, American Latvian Association and Lithuanian American Council - maintains a constant interest in human and religious rights behind the Iron Curtain - especially with regard to Estonia, Latvia and Lithuania.

Mr. Chairman, JBANC feels that a grave mistake has been made once again by returning this Ukrainian sailor back to the Soviet ship. Approximately 15 years ago on November 23, 1970, the same mistake was made with a Lithuanian sailor. Simas Kudirka jumped from the Soviet ship Sovetskaya Litva on to a Coast Guard ship, the Vigilant. Mr. Kudirka asked for asylum in the United States. Subsequently the Coast Guard officials on the Vigilant were advised to return Kudirka to the Soviet ship. Commander Jerome Flanagan, the Coast Guard's District Legal Officer stated, "A defection is a delicate diplomatic affair, rightfully handled by the State Department or the White House. The Coast Guard should not be in the business of creating foreign policy." Admiral Ellis', (U.S. Coast Guard) advise was the following, "In view of the nature of present arrangments with the Soviets and in the interest of not fouling up any of our arrangements as far as the fishing situation is concerned, I think they (Soviets) should know this and if they choose to do nothing, keep him on board, otherwise, put him back." Simas Kudirka was returned.

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Back in Soviet occupied Lithuania, Simas was accused of treason. The Soviet judge stated, "Kudirka committed a dangerous transgression against the state by going over to a ship belonging to a foreign government, and by that act, betraying the motherland." The judge tried Simas, and he was found guilty. He received a ten year sentence in a strict regime labor camp along with confiscation of personal property. Court costs were taken from Simas' earnings in the camps.

After 4 years in various labor camps close to the Urals, Simas was released from prison as a result of the continued efforts of Lithuanian Americans and others who lobbied for his freedom. He was reunited with his family in Lithuania and they then emigrated to the United States.

Given the facts of the Kudirka case, the Baltic American community is outraged with the naivete of the Department of State and the INS officials. JBANC calls for the immediate resignation of A. Nelson /Commissioner,INS; R. Ridgeway/Assistant Secretary of State-European and Soviet Affairs and any other government officials in charge of handling Mr. Medvid's case. Such professional naivete by U.S. government officials and deliberate deception by the State Department officials is embarassing to the American public, and potentially damaging to U.S. interests.

What Mr. Medvid has experienced so far, and what he faces back in Ukraine may never be known. But we do know what Simas Kudirka experienced as a result of his quest for freedom. If that is any indication of what Medvid will experience in Ukraine, it is our duty in the free world to inform everyone of this unconscionable injustice.

Knowing the nature of the Soviet legal system, how could U.S. government officials deny due process to Miroslav Medvid while he was on American soil? How could they ignore the fact that Catholic, Jewish, Protestant, Russian Orthodox and other dissidents are languishing in the Soviet Gulags. The dissidents such as Sakharov, Shukhevych (Ukrainian),

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Gajauskas (Lithuanian), Niklus (Estonian), and Doronina (Latvian), political and religious victims of the present Soviet reign of terror will view the United States State Department's naivete as another example of Western moral weakness.

The Baltic American community heeds President Reagan's words of June 14, 1985. That day the President made reference to the Baltic people behind the Iron Curtain,

> "The message of these heroes, both young and old is: You, our free brothers and sisters, are our voice to the free world. You must not cease to inform the world of what is being inflicted upon us here behind the Iron Curtain, for it is from your efforts that we get our strength to survive."

The message of Miroslav Medvid was clear and understood by the Baltic Americans and, indeed, by all Americans. HE WANTED FREEDOM.

In conclusion, Mr. Kudirka, in his book "For Those Still at Sea - The Defection of a Lithuanian Sailor", commented that he didn't understand why Americans worry that a strong stand on human rights jeopardizes detente. "If it does, then detente is not worth having; for if the Soviets do not respect human rights, how can we expect them to respect any agreement they make with us? There are principles on which compromise is not possible."

The Joint Baltic American National Committee strongly urges that swift action be taken by President Reagan and Congress to ensure that sailor Miroslav Medvid receive due process while he is still within the waters of the United States.

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APPENDIX 13

LETTER FROM THE JOINT BALTIC AMERICAN NATIONAL COMMITTEE REQUESTING FURTHER INVESTIGATION INTO THE CASE OF SEAMAN MIROSLAV MEDVID

JOINT BALTIC AMERICAN NATIONAL COMMITTEE

REPRESENTING
ESTONIAN AMERICAN NATIONAL COUNCIL
AMERICAN LATVIAN ASSOCIATION, INC.
LITHUANIAN AMERICAN COUNCIL, INC.

November 20, 1985

Dear Congressman:

We urge you to demand further investigation and immediate dismissal of the State Department, White House and Immigration and Naturalization Service (INS) officials who ignorantly mishandled Miroslav Medvid's defection attempt. The Joint Baltic American National Committee (JBANC) is outraged at such incompetence and lack of professionalism by U.S. government officials. As a result, America has once again been embarassed before the world.

15 years ago, President Nixon, referring to the return of Lithuanian sailor Simas Kudirka avowed, "I can assure you it will never happen again. The United States of America for a hundred ninety years has a proud tradition of providing opportunities for refugees and guaranteeing their safety and we are going to meet that tradition." As a result of their mistakes, Coast Guard officials Rear Admiral Ellis and Captain Brown, responsible for returning Mr. Kudirka, were forced into retirement.

The U.S. government officials who decided to return Mr. Medvid to the U.S.S.R. have guaranteed him a 10 year prison sentence, if not death! The proposed demotion of the two border agents is an insult not only to all Americans, but a betrayal of all our principles of liberty and freedom - the beacons of hope for the enslaved peoples of the world. The American public has common sense and understands the meaning of the statement made by Medvid, "I want to live in an honest country." They also understand that Miroslav Medvid will not be able to help his parents while he is sitting in a Soviet concentration camp for a period of ten or more years.

Congressman, we implore you to ensure that this embarrassing action be dealt with appropriately in the same manner it was handled 15 years ago. Finally, we ask that everything possible be done to guarantee the survival and safety of Miroslav Medvid.

Respectfully,

Algis Silas
Director of Public Relations

Guntars Meierovics
Chairman/JBANC

POST OFFICE BOX 4576 — ROCKVILLE, MARYLAND 20850 U.S.A. — TELEPHONE (301) [illegible]

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APPENDIX 14

Testimony of Alan C. Nelson, Commissioner, Immigration and Naturalization Service, Before the Senate Judiciary's Subcommittee on Immigration and Refugee Policy, February , 1986

Chairman Simpson and Members of the Committee, INS wishes to thank you for the opportunity to once again testify before your Subcommittee. We welcome this opportunity to clarify several specific issues about which there has been a great deal of misinformation. Attached for your information is my original testimony of November 5, 1985. Our prepared remarks will be concerned with the following areas: 1) The identification process to insure that the man interviewed was really Seaman Medvid; 2) Accounts from INS agents present concerning Seaman Medvid's desire to return the the Soviet Union; and 3) Direct observations of Seaman Medvid's behavior.

Identification Process

It has been alleged that the individual interviewed during the lengthy negotiations on the Marshal Konev was not the same person who initially jumped ship. The identification process that establishes that we were dealing with the same person throughout is as follows:

1) At the time of the first encounter by the Border Patrol on October 24th, Medvid was photographed, fingerprinted, and interviewed by two INS agents.

2) On October 25, our Deputy Chief Patrol Agent -- accompanied by one of the officers who originally interviewed Medvid and accompanied by a third agent -- boarded the Soviet ship. They secured Medvid's passport from the captain and went to the sickbay where the agent who originally encountered Medvid personally identified the individual confined as Medvid.

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3) The number of people who could positively identify crewman Medvid was further expanded on October 26, when the State Department representative and a U.S. Navy physician, accompanied by our agent, visited Medvid in the sickbay.

4) Subsequently, when Medvid appeared on board the Coast Guard Cutter Salvia for interview he was positively identified by the Deputy Chief Patrol Agent who saw him on October 25th, the State Department representative and the U.S. Navy doctor.

5) From the time Medvid arrived on the cutter on October 28th, until he was returnad to his vessel, he was consistently in the presence of U.S. officials who could positively identify him.

Sequence of Events

On October 28, 1985, as a result of diplomatic discussion between the Department of State and the Soviet Embassy in Washington, D.C., it was agreed that Seaman Medvid would be transferred from the M/V Marshal Konev to the United States Coast Guard Cutter Salvia for an interview in a non-threatening environment under U.S. control. The meeting was scheduled to occur at approximately 4:30 p.m. Representatives from the Immigration Service and the Department of State were selected, including Mr. Brandemuehl. The other members of the United States delegation were the interpreter and a United States Navy physician. The Soviet delegation consisted of Medvid, the Captain of the M/V Konev, the ships' doctor, and two officials from the Soviet Embassy.

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The United States interview team arrived on board the Cutter Salvia at approximately 4:30 p.m. with the Russian delegation arriving approximately 30 minutes later. The group assembled in the cutter's wardroom and the interview of crewman Medvid commenced with the State Department taking the lead in establishing the ground rules. The State Department would speak for the United States delegation, and the United States interpreter would translate Medvid's responses.

The INS observers noted that Medvid appeared intially quite nervous. Within minutes, he stated he was nauseous and requested to be moved outdoors. This request was granted. Subsequently Medvid was brought back to a cabin , allowed to lie down, and was examined by the United States doctor. Within 15-20 minutes Medvid stated he was ready to resume the interview and the group reconvened in the wardroom.

The State Department representative then asked Medvid a series of questions surrounding the circumstances of his departure from his vessel the night of the 24th, what happened on shore, and the events surrounding his returned to Konev.

During this process, the Department of State representative painstakingly and repeatly explained to Medvid that if he wanted to remain in the United States he could do so immediately without fear of being incarcerated, punished, or having reprisals taken against him in any manner. In spite of these assurances, Medvid stated on numerous occasions that he wanted to return to the USSR.

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At approximately 9:30 p.m. on October 26th, after consultation with superiors in Washington, the State Department representatives advised the Soviet delegation that the United States thought it prudent to move Medvid ashore where he could be further examined by our doctor and be given an opportunity of a good night's rest.

The Soviet delegation objected vehemently to this; however, when given an ultimatum of either accompanying Medvid or being returned to the Soviet Vessel without Medvid, they chose the former.

Had the Soviets not consented to our requests, the Immigration and Naturalization Service had in place extensive arrangements to remove Medvid if necessary.

On October 28th at approximately 11:15 p.m., Seaman Medvid and the accompanying United States and Soviet representatives were transferred to a nearby Naval Facility. Upon arrival at the facility Medvid was given a thorough medical examination and a psychological evaluation. He remained alone in his room with Border Patrol agents standing guard in the hallway. While in our custody, at no time, was Medvid allowed to be alone with Soviet representatives.

The next morning after breakfast, Medvid participated in an extensive interview with a United States Air Force psychiatrist. On October 29, at around 12 noon the United States and Russian representatives convened a second interview of Seaman Medvid.

The State Department official again asked the same series of questions as

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posed at the first interview and essentially received the same answers. There was, however, one substantial change in Medvid behavior. He became increasingly belligerent toward the United States delegation. Again, the State Department assured Medvid that if he elected to remain here he would not be subject to prosecution or forced to return to his ship or to the Soviet authorities. Notwithstanding that Medvid was provided these assurances, and he was on more than one occasion alone with a U.S. representative, he insisted upon returning to the U.S.S.R. and voluntarily made a written request to do so.

Mr. Chairman, I sincerely believe the United States Government responded properly to this situation, once we learned of our mistake. I believe that the Departments of Justice and State did everything in their power to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here in the United States. Extensive interviews, mental and physical examinations were conducted over a 24-hour-period in a setting totally under U.S. control. Following those interviews and examinations, it was the strong belief of all U.S. government representatives that the Medvid written statement represented his true wishes. To have refused Medvid's express and repeated requests to return to his vessel under such circumstances would have been an improper action for the United States.

In addition to the foregoing, I believe it is especially noteworthy that several U.S. Courts -- including the U.S. Supreme Court -- were unpersuaded by allegations that the government's actions regarding Seaman Medvid were illegal, suspect, or arbitrary and capricious. The following courts have sustained the government's decision:

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- The U.S. District Court for Eastern District of Pennsylvania on October 31, 1985, denied a motion for a temporary restraining order or preliminary injunction;

- The U.S. District Court for the District of Columbia on November 1, 1985, denied a temporary restraining order stating that the government was found to have made a bona fide effort to ascertain whether Medvid sought asylum and its negative conclusion was neither arbitrary nor capricious;

- The U.S. Court of Appeals for District of Columbia Circuit on November 5, 1985, affirmed the lower court's decision stating that the government's decision to return Medvid to the Soviet vessel after extensive interrogation and medical examination was not arbitrary or capricious;

- The U.S. District Court for Eastern District of Louisiana on November 6, 1985, denied a temporary restraining order as not in the public interest, finding that the agencies charged with decision-making responsibility did not act unreasonably under the law;

- The U.S. District Court for the Eastern District of Louisiana on November 8, 1985, denied a petition for habeas corpus, finding that the government officers did not have custody over Medvid.

- The U.S. Supreme Court on November 8, 1985, denied immediate

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injunctive relief for the matters before the District of Columbia Circuit.

- The U.S. District Court for the Eastern District of Louisiana on November 9, 1985 dismissed for lack of jurisdiction a suit brought by Senator Helms to enforce a legislative subpoena served upon the Soviet vessel.

- The U.S. Court of Appeals for Fifth Circuit on November 9, 1985,; affirmed the denial of habeas corpus for the reason stated by the District Court.

- The U.S. Supreme Court on November 9, 1985, denied a motion for immediate Supreme Court review of the matters before the 5th Circuit.

In conclusion, as you are aware, I appeared before the House Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, on November 7, 1985, and provided testimony as to this incident and set forth our procedures for processing such asylum requests. It is clear that, with respect to the initial interview and ordered return of Medvid to the Soviet vessel, existing procedures for processing asylum cases were not utilized. It is likewise clear, however, that this incident should be and indeed has been utilized to precipitate a thorough review of relevant guidelines and the implementation of changes necessary to preclude such an occurrence in the future. I can assure you that all INS officers are on notice today of what is expected of them in this regard.

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ATTACHMENT A

Chairman Simpson and Members of the Subcommittee,

I am pleased to be with you today to discuss the case of Soviet crewman, Miroslav Medvid and to review United States asylum procedures.

This testimony focuses on three areas. First, a summary of existing U. S. government procedures for handling potential asylum cases, specifically relative to crewmen from Soviet bloc countries. Second, a review of the INS handling of the matter. Third, a recounting of the chronology of the efforts to reinterview Mr. Medvid in a neutral setting.

We believe the existing procedure for handling potential asylum cases for crewmen from Soviet bloc countries are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If these existing procedures, which require supervisory review, contact with INS headquarters and the Department of State, had been followed, we believe Mr. Medvid would not have been summarily returned to the shipping agents and hence to the soviet vessel without a thorough interview and determination of his intentions. The existing operating instructions are attached.

As indicated mistakes were made in the initial handling of the Soviet sailor, Miroslav Medvid, who deserted his vessel, the M/V Marshal Konev, in New Orleans, Louisiana, on October 24, 1985. When the fact of Mr. Medvid's premature return to the Soviet cargo ship became known, actions were promptly initiated by the Immigration and Naturalization Service and in conjunction with the Departments of Justice and State, the National Security Council, the U. S. Coast Guard, and the U. S. Customs Service to assure that Mr. Medvid would have an opportunity to claim asylum after due deliberation in a neutral setting. Through careful and vigorous action, the circumstances were achieved whereby Mr. Medvid was thoroughly interviewed and examined by United States officials in a neutral setting to ascertain his decision on remaining in the United States or returning to the Soviet Union.

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The Incident

The Soviet crewman, Miroslav Medvid, arrived in the U. S. October 24, 1985, on board the soviet vessel M/V Marshal Konev at Belle Chasse, Louisiana. The crew was inspected by the Immigration Service, and with the exception of four officers, was denied entry and detained on board in the late afternoon. Mr. Medvid subsequently jumped over the side of the vessel and swan to shore. Mr. Medvid was given a ride into New Orleans, Louisiana, by a local citizen and delivered to the New Orleans Police. Mr. Medvid was then taken to the New Orleans Harbor Police Headquarters. The U.S. Border Patrol had been contacted and took custody of Mr. Medvid and transported him to the Border Patrol Station in New Orleans in the early evening. It was ascertained by the Border Patrol agents that Mr. Medvid was from the Soviet Union and had deserted his vessel. An INS interpreter with capacity in Ukranian was contacted in New York City to assist in the interview of Mr. Medvid. The processing officer, after a lengthy telephonic conversation between the interpreter, Mr. Medivd and himself, made a determination that the Soviet sailor was not seeking political asylum, but was only a disaffected crewman. The officer then contacted the shipping agency for the vessel, who sent two employees to the Border Patrol station to return the Soviet sailor to his vessel. The shipping agency employees took charge of Mr. Medvid shortly before midnight on October 24.

Procedures for Handling Potential Asylum Claimants

In the early 1970's, an incident involving the return by U.S. officials of Simus Kidurkus, a Soviet seaman of Lithuanian ancestry, to his Soviet fishing boat triggered a review within the U.S. government of procedures regarding forcible repatriation. As a result, personnel in all federal agencies likely to encounter defecting seamen were advised of procedures to preclude forcible repatriation and the appropriate roles of the State Department and the Immigration and Naturalization Service in handling asylum claims from such persons. Initially outlined through field directives and operating instructions, procedures for handling asylum claims by INS officers were established by regulations published in

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December 1974. (First published in 8 CFR Part 108, these regulations were revised following the passage of the Refugee Act of 1980 as 8 CFR Part 208). The procedures established under the accompanying operations instructions have specific provisions for claims that may arise from crewmen from Communist bloc countries. Immigration inspectors are the officers who most often encounter crewmen who express an unwillingness to return to their home countries, but INS investigators and Border Patrol agents also have initial contacts with such persons.

Service operations instructions call for special procedures in so-called "immediate action" cases, which include among others cases involving Soviet nationals; diplomats; nationals of a Communist country who are present as part of an official visit, exchange program or state owned business or enterprise activity; or persons whose asylum request is politically sensitive or involves the possibility forced repatriation. In such cases Service officers are to contact the local INS and District Directors and give descriptions of the individual case, the nature of the claim and why it is considered an immediate action case.

The District Director makes an assessment of the case and then contacts the Associate Commissioner for Examinations in the INS Central Office, if he or she concludes that the alien's claim should be handled on an immediate action basis. The Associate Commissioner for Examinations in turn is responsible to contact the State Department Operations Officer.

After further interviewing of the claimant and the completion of an asylum application which the applicant signs, information is provided by telephone and otherwise as expeditiously as possible to the Bureau of Human Rights and Humanitarian Affairs of the Department of State. That bureau provides an advisory opinion on the asylum request, which is considered by the District Director in making his or her final decision on the asylum claim. In these and all other claims, the fundamental basis for a grant of asylum is that the person has established that he or she has a well-founded fear of persecution on account of race, religion,

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nationality, membership on a particular social group, or political opinion, if he or she should be returned to his or her country of nationality or of last habitual residence.

Service personnel frequently encounter persons who are not fluent in English or any other language known to them. Consequently, they will seek assistance from INS interpreters, other Service personnel, or local persons with a capacity in the language of the alien. The effort is made to give an asylum applicant a full opportunity to articulate the bases on which he or she fears return to his or her homeland.

These existing procedures were not followed in that the District Director was not contacted, no supervisory review of the decision to return the crewman was sought and neither the INS Central Office nor the Department of State was informed. If that had been done, we believe Mr. Medvid would not have been summarily returned to the shipping agent and hence to the Soviet vessel without a thorough interview and determination of his intentions.

Routine procedures were followed until the interrogation phase of the case by the Border Patrol agents. As the interview was conducted through the interpreter, several warning signs should have mandated exploration of the "immediate action" disposition pursuant to the operating instructions for political asylum:

- Mr. Medvid's Soviet nationality was an unusual factor and should have raised questions about the assumption that he was a routine ship jumper.

- When Medvid claimed he did not want to return to the Soviet Union for "moral and political" reasons, further investigation was warranted to assure that he understood his options rather than concluding that he was not seeking political asylum and turning him over to the shipping agent.

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- If there were problems with the quality of the interpretation or complications due to the telephonic connection over which the questions and answers had to be communicated, the Soviet sailor should have remained in INS custody until these problems were corrected.

- Finally, specific guidelines were available in the New Orleans Border Patrol Station setting forth procedures for handling Soviet nationals.

We believe that the existing procedures covering the handling of crewmen who indicate an unwillingness to return to their home country are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If they had been followed, we are convinced that Medvid would not have been returned to his ship without further interviewing and review at a higher level by both INS and the Department of State.

In light of the Medvid incident, INS headquarters has cabled a copy of such operating instructions to all INS offices, both to emphasize the existing asylum procedures and to seek any suggested improvements.

The existing instructions are comprehensive; however, it is important to use this incident as an opportunity to thoroughly review the guidelines and consider changes in order to avoid any future similar incidents. An INS task force has been constituted for this purpose, with a preliminary report due by November 15, 1985. Training procedures will also be reviewed by this task force.

Actions Leading to the Reinterview of Mr. Medvid

I have dwelt at some length on the initial processing of Mr. Medvid, because questions have been raised about existing INS procedure and their appropriateness and sensitivity to applications from persons such as this Soviet crewman. Now I would like to detail what actions were taken, once the summary return of Mr. Medvid came to INS supervisory attention.

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Mid-afternoon on Friday, October 25, I became aware of this situation following calls from the New Orleans District Office and the New Orleans Border Patrol sector headquarters to the Associate Commissioner for Enforcement. At that point, the Southern Regional Commissioner, located in Dallas, Texas had already ordered Border Patrol agents to board the M/V Marshal Konev and try to return Mr. Medvid to the shore. This was unsuccessful. The Associate Commissioner for Enforcement instructed New Orleans to contact the U.S. Coast Guard and ask that they dispatch a vessel to the scene to insure that the Soviet ship not depart. This was done. I directed that the Department of State be informed and personally contacted the Deputy Attorney General. We ordered a debriefing of the Border Patrol agents involved and subsequently a report from the INS contract interpreter from New York City.

The Department of State dispatched personnel from the Office of Soviet Affairs and the Office of the Legal Advisor, who arrived in New Orleans Friday evening. The Assistant Commissioner for the Border Patrol and his Deputy went to New Orleans to join the Southern Regional Commissioner, to ascertain precisely what had happened, and seek further opportunity to interview the Soviet seaman away from his ship. Negotiations with the captain of the Soviet vessel and later Soviet officials in New Orleans were conducted by these State Department and INS officials.

Throughout the weekend of October 26-27, senior INS managers and myself worked with personnel on the scene and with the National Security Council, the Departments of Justice, State, Transportation and Treasury officials in Washington to plan to secure the removal of Mr. Medvid to a neutral site and to enable us to interview him and ascertain his considered decision on remaining in the United States or returning to the Soviet Union. On Monday, October 28, the Soviet authorities agreed to the transfer of Mr. Medvid from the Soviet vessel to a location where he could be questioned by U.S. officials in a neutral atmosphere.

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That same afternoon, Miroslav Medvid was transferred to the U.S. Coast Guard vessel Salvia accompanied by the Soviet ship captain and a Soviet diplomatic representative. In the interview conducted by a State Department official with an INS representative present. Through an interpreter Mr. Medvid stated his decision to return to the U.S.S.R. and not to remain in the United States. However, to insure Mr. Medvid had time to reflect on his decision in a calm setting, and after consulting with DOS command center, a decision was made to take him ashore for a physical examination and a night's rest.

Mr. Medvid was taken to the Naval Support Activity at Algiers, Louisiana, late evening of the 28th and subsequently received a thorough medical examination. A psychiatric examination was also initiated that evening, and was continued in the morning of the 29th. Following a night of rest at the Naval facility where Mr. Medvid was alone, a second interview was conducted during mid-morning on the 29th. Mr. Medvid emphatically repeated his decision to return to the Soviet Union, adding that he desired to see his family. In both interiews, it was carefully explained to Mr. Medvid that if he feared returning to the Soviet Union, he could remain in the United States without any punishment or imprisonment here.

On Tuesday, October 29, 1985, prior to the resumption of the interviewing, a thorough review of the situation was held among U.S. officials on the scene in New Orleans and persons at the command post at the Department of State. It was determined that the Soviet sailor's mental and physical state was satisfactory and that the interview should be resumed. At the conclusion of the interview, it was the consensus of the United States team that Mr. Medvid was competent to make a decision concerning whether to remain in the United States. Following a final consultation with the Department of State and other high level U.S. officials, Mr. Medvid signed a statement denying any claim to asylum in the U.S. and requesting that he be allowed to return to the Soviet Union. After that he was returned to the M/V Marshal Konev.

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Conclusion

It should be clear from my statement that there were errors in the performance of the Service officers who initially processed Mr. Medvid and decided upon his return to the Soviet vessel. Mistakes in judgement were made; existing procedures for handling potential asylum claimants were not followed.

However, the procedures and our overall system for the adjudication of asylum claims are fundamentaly sound. It is a good system. Nevertheless, we are currently conducting a very thorough review of the procedures to determine whether we should amend existing operating instructions to ensure that any person suggesting an unwillingness to return to his country will be interviewed completely to elicit the basis for a well-founded fear of persecution. I can assure that all of our Service officers are on notice today of what is expected of them in this regard.

I am proud of how the United States Government responded to this situation, once we learned of the return of Mr. Medvid. I believe that the Departments of Justice and State and others did all that we could to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here as an asylee in the United States. Extensive interview and mental and physical examinations were conducted over a 24 hour period in a setting under full U.S. control. Following those interviews and examinations, it was the strong belief of all U. S. government respresentatives that the expressly stated and signed written statement of Mr. Miroslav Medvid that he had decided to return to the Soviet Union represented the true facts and proper resolution of this issue.

That completes my testimony on this matter. I will be glad to answer questions that you may have.

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ATTACHMENT

208.8 PROCESSING ASYLUM REQUEST. IMMEDIATE ACTION CASES

(A) DEFINITION

(I) A REQUEST (OR IMMINENT REQUEST) FOR ASYLUM WHICH IS POLITICALLY SENSITIVE OR INVOLVES THE POSSIBILITY OF FORCIBLE REPATRIATION.

(II) ANY NATIONAL OF THE SOVIET UNION;

(III) ANY NATIONAL OF EAST GERMANY, ROMANIA, POLAND, HUNGARY, CZECHOSLOVAKIA, BULGARIA, MONGOLIA, CUBA, ALBANIA, THE PEOPLE'S REPUBLIC OF CHINA, NORTH KOREA, VIETNAM, LAOS, OR CAMBODIA, WHO IS PRESENT IN THE UNITED STATES AS PART OF AN OFFICIAL VISIT, FORMAL CULTURAL OR ATHLETIC EXCHANGE, EXCHANGE STUDENT PROGRAM OR STATE OWNED BUSINESS OR ENTERPRISE ACTIVITY, OR WHO IS IN TRANSIT THROUGH THE UNITED STATES IN SUCH CAPACITY;

(IV) ANY FOREIGN DIPLOMAT, FOREIGN CONSULAR OFFICER, OR FOREIGN OFFICIAL, REGARDLESS OF THE COUNTRY.

(V) ANY OTHER ALIEN WHO ASSERTS THERE IS A SERIOUS THREAT OF FORCIBLE REPATRIATION TO HIMSELF OR TO HIS FAMILY.

(VI) ANY REQUEST FOR ASYLUM WHICH FOR OTHER REASONS PRESENTS SPECIAL PROBLEMS CALLING FOR PROMPT ATTENTION.

(B) NOTIFICATION. WHEN IT COMES TO THE ATTENTION OF ANY SERVICE EMPLOYEE THAT A PERSON DESCRIBED IN PARAGRAPH (A) ABOVE MAY BE SEEKING ASYLUM, THE DISTRICT DIRECTOR WILL BE

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NOTIFIED IMMEDIATELY AND FURNISHED ALL THE PERTINENT FACTS OF THE CASE, INCLUDING THE ALIEN'S IDENTITY, NATIONALITY, NEWSWORTHINESS OR PROMINENCE, AND REASON(S) GIVEN FOR REQUESTING ASYLUM. IF THE DISTRICT DIRECTOR AGREES THAT THE ASYLUM APPLICANT FALLS INTO THE IMMEDIATE ACTION CATEGORY, HE WILL EXPEDITIOUSLY RELATE THE FACTS OF THE CASE TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, OR THE CENTRAL OFFICE DUTY OFFICER, AND THE APPROPRIATE REGIONAL OFFICIAL. THE ASSOCIATE COMMISSIONER, EXAMINATIONS, OR THE CENTRAL OFFICE DUTY OFFICER WILL ALERT THE SERVICE'S PUBLIC INFORMATION OFFICER AND DEPARTMENT OF STATE'S OPERATIONS OFFICER, TELEPHONE 202-632-1512 OF THE REQUEST FOR ASYLUM.

(C) INTERVIEW OF ASYLUM APPLICANT. AFTER NOTIFYING THE ASSOCIATE COMMISSIONER, EXAMINATIONS, THE DISTRICT DIRECTOR WILL IMMEDIATELY ASSIGN AN OFFICER TO INTERVIEW THE ASYLUM APPLICANT UNDER OATH USING FORM I-589. THE APPLICANT WILL BE GIVEN AN OPPORTUNITY TO MAKE ANY STATEMENT OR PRESENT ANY EVIDENCE HE/SHE FEELS TENDS TO SUBSTANTIATE THE CLAIM OR FEAR OF PERSECUTION UPON RETURN TO HIS/HER COUNTRY OF NATIONALITY OR LAST HABITUAL RESIDENCE. THE ANSWERS GIVEN AND ANY EVIDENCE PRESENTED BY THE APPLICANT WILL BE MADE PART OF THE APPLICATION, AFTER WHICH THE APPLICANT WILL BE INSTRUCTED TO REVIEW THE FORM AND SIGN IT.

(D) SHELTER AND SUSTENANCE OF ASYLUM APPLICANT. IF IT APPEARS NECESSARY, OR THE ASYLUM APPLICANT REQUESTS IT, HE SHE WILL BE REFERRED TO THE APPROPRIATE VOLUNTARY AGENCY FOR SHELTER, SUSTENANCE, OR OTHER SIMILAR NEEDS.

(E) REQUEST FOR BHRHA ADVISORY OPINION. UPON COMPLETION OF THE INTERVIEW AND EXECUTION OF THE I-589, THE DISTRICT DIRECTOR WILL TELEPHONE ALL FACTS OF THE CASE TO THE BHRHA (202-632-2551 OR 632-2570) AND REQUEST AN ADVISORY OPINION. BHRHA WILL FURNISH ITS OPINION TO THE ASSOCIATE

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COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, WHO WILL RELAY IT TO THE DISTRICT DIRECTOR. UPON RECEIPT OF THE BHRHA ADVISORY OPINION, THE DISTRICT DIRECTOR WILL ADJUDICATE THE CASE.

(F) MATERIAL CHANGE OF FACTS. IF AT ANY TIME DURING THE PROCESSING OF AN IMMEDIATE ACTION CASE THERE IS A MATERIAL CHANGE IN THE FACTS OF CIRCUMSTANCES OF THE ASYLUM REQUEST, THEY WILL BE FURNISHED EXPEDITIOUSLY TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE.

(G) PUBLIC INFORMATION. THE DISTRICT DIRECTOR HAVING JURISDICTION OVER THE ASYLUM REQUEST AND THE PUBLIC INFORMATION OFFICER IN THE CENTRAL OFFICE AND APPROPRIATE REGION WILL BE RESPONSIBLE FOR ALL OFFICIAL STATEMENTS RELATING TO IMMEDIATE ACTION CASES. SPECIAL CARE WILL BE TAKEN TO ENSURE THAT OFFICIAL STATEMENTS ON ANY GIVEN CASE ARE CONSISTENT WITH PREVIOUS SERVICE PRONOUNCEMENTS ON SUCH CASE. ADDITIONALLY, SPECIAL CARE SHOULD BE TAKEN THAT OFFICIAL SERVICE STATEMENTS DO NOT CONVEY ANY IMPRESSION OF PREJUDGMENT IN THE CASE.

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APPENDIX 15

Chronology of Legal Efforts by Private Parties to Prevent Seaman Medvid's Return to the U.S.S.R.[1]

--- THE FIRST LAWSUIT WAS BROUGHT IN THE U.S. DISTRICT COURT IN PHILADELPHIA ON OCTOBER 30 BY THE UKRAINIAN HUMAN RIGHTS COMMITTEE, THE UKRAINIAN-AMERICAN BAR ASSOCIATION, AND THE UKRAINIAN CONGRESS COMMITTEE OF AMERICA. THIS ACTION WAS BROUGHT AGAINST THE SECRETARY OF STATE, THE COMMISSIONER OF IMMIGRATION, AND "JOHN DOE." THE PLAINTIFFS' REQUEST FOR DELAY OF SEAMAN MEDVID'S DEPARTURE WAS DENIED BY UNITED STATES DISTRICT COURT JUDGE MCGLYNN ON OCTOBER 31, AND WAS NOT APPEALED TO THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT.

--- THE NEXT EFFORT TO STOP SEAMAN MEDVID'S DEPARTURE FROM THE U.S. BY COURT ACTION OCCURRED ON NOVEMBER 1 WHEN THE UKRAINIAN-AMERICAN BAR ASSOCIATION AND OTHERS SOUGHT A TEMPORARY RESTRAINING ORDER IN THE U.S. DISTRICT COUPT FOR THE DISTRICT OF COLUMBIA. ON THE SAME DAY, U.S. DISTRICT COURT JUDGE LOUIS F. OBERDORFER DENIED PLAINTIFFS' APPLICATION AFTER A LENGTHY HEARING. THE COURT'S OPINION CONCLUDED AS FOLLOWS:

[1] Prepared by Jim Hergen, Assistant Legal Adviser for Consular Affairs, Department of State.

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> THE COURT IS NOT PERSUADED THAT THE CONCLUSION THAT MEDVID WAS VOLUNTARILY DEPARTING THE UNITED STATES WAS ARBITRARY OR CAPRICIOUS. THE GOVERNMENT MADE A BONA FIDE EFFORT TO ASCERTAIN WHETHER MEDVID SOUGHT ASYLUM. IN ALL THE CIRCUMSTANCES, ITS NEGATIVE CONCLUSION WAS NEITHER ARBITRARY NOR CAPRICIOUS. ACCORDINGLY, THE APPLICATION BY PLAINTIFFS FOR A TEMPORARY RESTRAINING ORDER IS DENIED.

--- ON NOVEMBER 2 PLAINTIFFS APPEALED TO THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT. EXTENSIVE LEGAL BRIEFS WERE FILED BY BOTH SIDES, AND A THREE-JUDGE PANEL OF THE APPEALS COURT HEARD ORAL ARGUMENT FOR MORE THAN AN HOUR ON THE AFTERNOON OF NOVEMBER 4.

IN A NINE-PAGE DECISION IN FAVOR OF THE GOVERNMENT, THE COURT OF APPEALS MADE THE FOLLOWING OBSERVATIONS ABOUT THE GOVERNMENT'S CONDUCT OF THE MEDVID AFFAIR:

> THE CRITICAL EVENTS WHICH FOLLOWED INS' INITIAL ERRORS SATISFY US THAT THE DISTRICT COURT QUITE CORRECTLY CONCLUDED THAT THE GOVERNMENT'S ULTIMATE DECISION IN THIS MATTER -- THAT SEAMAN MEDVID FINALLY DECIDED NOT TO SEEK ASYLUM -- WAS NOT SHOWN BY PLAINTIFFS IN THESE INJUNCTIVE PROCEEDINGS TO BE ARBITRARY AND CAPRICIOUS.***** THE PROCEDURES WERE, IN A WORD, THOROUGH AND STUDIED. ON THE RECORD BEFORE US, THERE WAS NOT ONLY NO RUSH TO JUDGMENT, BUT TO THE CONTRARY, THERE WAS A CONTINUED EFFORT OVER SEVERAL DAYS AND ON U.S. TERRITORY TO ASCERTAIN MEDVID'S TRUE WISHES. ***** IN ADDITION, WE CAN FIND NO LEGAL ERROR ON THIS RECORD IN THE GOVERNMENT'S ACTIONS FOLLOWING THE REMOVAL OF MEDVID TO U.S. FACILITIES; WE DISCERN IN THE PRESENT REGULATIONS NO REQUIREMENT THAT, UNDER THE CIRCUMSTANCES PRESENT HERE, THE GOVERNMENT WAS OBLIGATED IN THE SUBSEQUENT INTERVIEWS TO FOLLOW THE SPECIFIC PROCEDURES ENUMERATED IN PART 208 OF 8 C.F.R., NAMELY FURNISHING MEDVID WITH AN I-589 APPLICATION FORM FOR REQUESTING ASYLUM.

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> FINALLY, WE CONCLUDE THAT THE SPECIFIC RELIEF SOUGHT BY THE APPELLANTS, NAMELY A MANDATORY INJUNCTION PREVENTING THE MARSHALL KONIEV FROM LEAVING THE UNITED STATES ... AND AN ORDER REQUIRING "[T]HE BOARDING OF THE MARSHALL KONIEV AND THE SEIZURE OF PLAINTIFF, MEDVID, BY UNITED STATES AUTHORITIES AND PLACEMENT IN A 'SAFE HOUSE' PENDING A COMPLETE ... INVESTIGATION," ... WOULD DIRECTLY ENMESH THE JUDICIARY IN THE MOST DELICATE AND SENSITIVE MATTERS AT THE HEART OF THIS NATION'S FOREIGN RELATIONS.

WITH RESPECT TO THE MUCH-DISCUSSED CONTROVERSIES ABOUT SEAMAN MEDVID'S ALLEGED DENIAL OF ACCESS TO A UKRAINIAN-SPEAKING INTERPRETER AND THE PRESENCE OF SOVIET AUTHORITIES DURING THE INTERVIEWS, THE COURT OF APPEALS TOOK PAINS TO MAKE THE FOLLOWING OBSERVATIONS:

> APPELLANTS ALSO ALLEGE THAT MEDVID WAS NOT PROVIDED WITH A UKRAINIAN INTERPRETER DURING THE STATE DEPARTMENT-CONDUCTED INTERVIEWS. ON THIS RECORD, HOWEVER, WE ARE UNABLE TO FIND ANY EVIDENCE THAT MEDVID WAS UNABLE TO COMMUNICATE IN OR UNDERSTAND RUSSIAN. IN ADDITION, APPELLANTS ALLEGE THAT THE SUBSEQUENT INTERVIEWS CONDUCTED ON THE CUTTER AND AT THE NAVAL FACILITY WERE, IN EFFECT, TAINTED BY THE PRESENCE OF SOVIET OFFICIALS. BUT WHATEVER ITS PRACTICAL FORCE, APPELLANTS' ARGUMENT IN THIS RESPECT IS SEVERELY UNDERCUT BY THE FACT THAT NOTHING TO WHICH WE HAVE BEEN POINTED IN THE APPLICABLE STATUTES AND REGULATIONS PROHIBITS THE PROCEDURES EMPLOYED HERE. IN THE ABSENCE OF CONTROLLING STATUTORY OR REGULATORY PROVISIONS, THE DETERMINATION OF HOW TO CONDUCT SUCH ASYLUM-RELATED PROCEDURES IS A MATTER ENTRUSTED TO THE PEROGATIVE OF THE EXECUTIVE. WE CERTAINLY ARE UNPREPARED TO CONCLUDE, PARTICULARLY ON THIS LIMITED RECORD, THAT THE MERE PRESENCE OF SOVIET OFFICIALS AT INTERVIEWS CONDUCTED BY U.S. OFFICIALS AT U.S. GOVERNMENT FACILITIES VITIATED MEDVID'S FREE WILL.

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--- ON NOVEMBER 7, JUDGE MARTIN L. C. FELDMAN OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA ISSUED AN EXTRMEMELY THOROUGH AND ELOQUENT FOURTEEN PAGE DECISION IN FAVOR OF THE GOVERNMENT AND AGAINST VARIOUS PLAINTIFFS WHO SOUGHT TO DELAY SEAMAN MEDVID'S DEPARTURE FOR THE U.S.S.R. AFTER TAKING EXTENSIVE EVIDENCE REGARDING THE CIRCUMSTANCES SURROUNDING SEAMAN MEDVID'S DECISION TO DEPART THE UNITED STATES, JUDGE FELDMAN MADE THE FOLLOWING SPECIFIC OBSERVATIONS ABOUT THE CASE:

> THIS COURT DOES NOT DOUBT THAT THE STORY MEDVID TOLD THE INTERVIEWERS ON THE COAST GUARD VESSEL ABOUT FALLING OVERBOARD WHILE MAKING SOME ELECTRICIAL REPAIRS WAS PROBABLY UNTRUE, AND MEDVID PROBABLY DID DESIRE INITIALLY TO DEFECT ...; THE EVIDENCE OF THE EVENTS OF OCTOBER 24TH AND OCTOBER 25TH WOULD CLEARLY SEEM TO INDICATE THAT, ESPECIALLY WHEN ONE RECALLS HIS SECOND ATTEMPT TO LEAVE THE SHIP AFTER HE HAD BEEN SUMMARILY RETURNED. BUT THERE IS NO DOUBT THAT THE STATE DEPARTMENT AUTHORITIES DECIDED AFTER INTENSE SAFEGUARDS WERE ESTABLISHED THAT MEDVID HAD CHANGED HIS MIND, AND HIS INTERVIEWERS WERE CONFRONTED WITH THAT SITUTATION.
>
> * * * * *
>
> ALTHOUGH COMMISSIONER NELSON ... ADMITS THAT THE INS VIOLATED ITS OWN "IMMEDIATE ACTION" PROCEDURES BY INITIALLY SUMMARILY RETURNING MR. MEDVID BACK TO THE SHIP WITHOUT ANY ADMINISTRATIVE REVIEW OF THAT DECISION AND WHILE IT SEEMS CERTAIN THE INS INITIALLY BUNGLED, IT IS CLEAR THAT THEREAFTER, OVER A PERIOD OF DAYS, EXTRAORDINARY MEASURES WERE TAKEN TO INSURE THAT MR. MEDVID WAS GIVEN THE OPPORTUNITY IN NON-THREATENING SURROUNDINGS TO INDICATE HIS WISHES. THESE EXECUTIVE AGENCIES CHARGED WITH THE RESPONSIBILITY FOR MAKING THE DECISIONS WHICH WERE ULTIMATELY MADE, TO RETURN MR. MEDVID TO THE SHIP, WERE GIVEN NO CHOICE BY HIM.

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* * * * *

THIS COURT FINDS THAT THERE IS NO SUBSTANTIAL LIKELIHOOD THAT MR. MEDVID WILL PREVAIL ON THE MERITS AND, FURTHER, THAT THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER UNDER THESE CIRCUMSTANCES WOULD NOT BE IN THE PUBLIC INTEREST.

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THIS CASE CONTAINS ENORMOUS EMOTIONAL AND HUMANITARIAN APPEAL TO THE PERSONAL BELIEFS OF THIS COURT. IT TRIGGERS AN AWAKENING OF GRATEFULNESS FOR OUR OWN CIRCUMSTANCES, AND REQUIRES AN AFFIRMATION OF REGARD FOR ALL WHO SHALL SEEK TO FLEE TO THE SHORES OF FREEDOM. BUT IT ALSO DEMANDS RESPECT TO THE RULE OF LAW; IT REQUIRES US ALL TO RECALL THAT THE LEGITIMACY OF OUR INSTITUTIONS OF JUSTICE IS THE LYNCHPIN OF OUR FREEDOM. AND NO AMOUNT OF SELF-CENTERED PATRIOTISM COMPELS THIS COURT TO CONCLUDE THAT THE JUDICIARY SHOULD INSERT ITSELF INTO THE FOREIGN POLICY OF THIS COUNTRY. THAT WOULD BE THE FUNCTIONAL RESULT OF GRANTING A TEMPORARY RESTRAINING ORDER; IT WOULD, AS COUNSEL FOR PLAINTIFFS ADMITTED, POSSIBLY PROVOKE A CONFRONTATION BETWEEN THIS NATION AND THE SOVIET UNION. THIS COURT UNDERSTANDS THE LEGITIMATE CONCERNS OF ALL THOSE WHO HAVE EXPRESSED THEIR SOLIDARITY WITH WHAT THEY BELIEVE TO BE THE CIRCUMSTANCES OF SEAMAN MEDVID. BUT THE MAGNITUDE OF OUT EMOTIONS MUST YIELD TODAY. FOUR FEDERAL JUDGES OF TWO FEDERAL COURTS IN WASHINGTON, D.C., AND THE STATE DEPARTMENT OF THE UNITED STATES, IN CONSULTATION WITH THE NATIONAL SECURITY COUNCIL, AND THE DEPARTMENTS OF JUSTICE, TREASURY, AND TRANSPORTATION, AS WELL AS SENIOR OFFICIALS OF THE INS, HAVE DETERMINED THAT SEAMAN MEDVID WISHES TO RETURN TO THE SOVIET UNION AND NOT SEEK POLITICAL ASYLUM HERE AND, FURTHER, THAT THOSE AGENCIES CHARGED WITH THE DECISION-MAKING RESPONSIBILITY DID NOT ACT UNREASONABLY UNDER LAW. THIS COURT WILL NOT SECOND GUESS THEM. WHILE THE CIRCUMSTANCES SURROUNDING THE MEDVID INCIDENT ARE UNUSUAL, THE LIKELIHOOD THAT PLAINTIFFS WOULD SUCCEED IN THE FACE OF ALL THAT HAS OCCURRED UNTIL NOW IS AT BEST REMOTE. FURTHER, THE GRANT OF A TEMPORARY RESTRAINING ORDER WOULD NOT BE IN THE PUBLIC INTEREST.

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--- WE ALSO UNDERSTAND THAT ON NOVEMBER 8 THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED A PETITION FOR A WRIT OF HABEAS CORPUS THAT WOULD HAVE DELAYED SEAMAN MEDVID'S DEPARTURE.

--- FINALLY, ON NOVEMBER 8 THE UKRAINIAN-AMERICAN BAR ASSOCIATION AND OTHERS APPEALED TO THE UNITED STATES SUPREME COURT FOR AN ORDER DELAYING SEAMAN MEDVID'S DEPARTURE FROM THE U.S. PENDING APPEAL OF THE NOVEMBER 5 DECISION OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. THE SUPREME COURT DENIED THIS APPLICATION ON THE SAME DAY WITHOUT A HEARING.

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